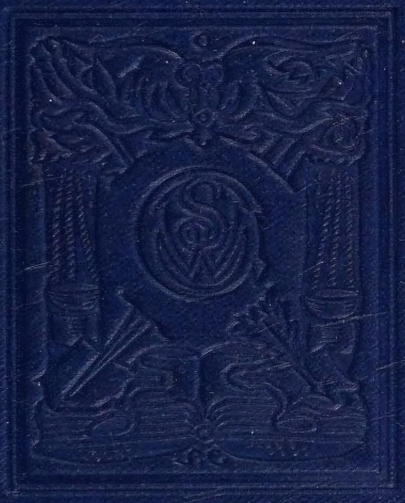

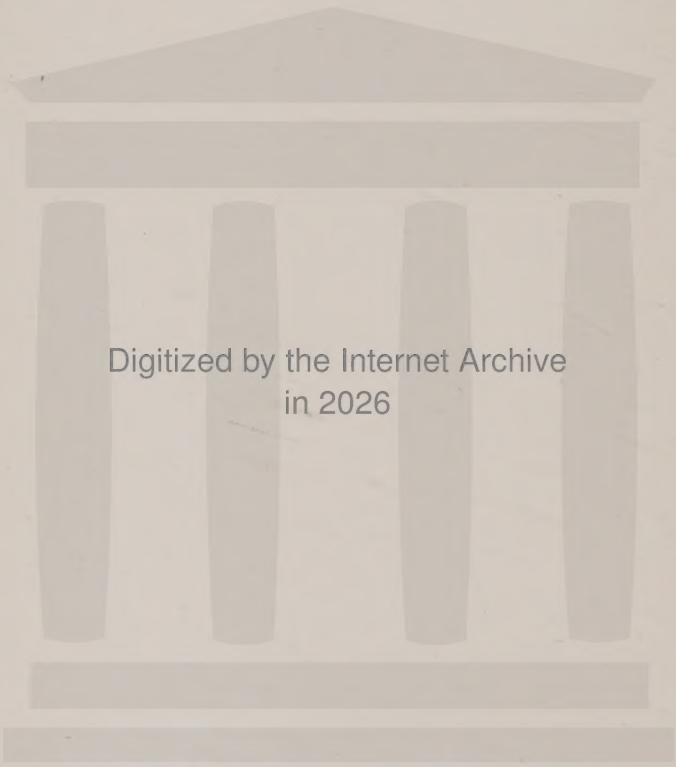
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THE SMALL LANDHOLDERS (SCOTLAND) ACT, 1911, &c.

THE SMALL LANDHOLDERS (Scotland) ACT 1911

THE CROFTERS HOLDINGS (Scotland) ACTS 1886, 1887, 1891 and 1908

AND THE CONGESTED DISTRICTS (Scotland) ACT 1897

WITH AN INTRODUCTION AND NOTES

AND APPENDICES CONTAINING FORMS FOR USE UNDER THE ACTS, &c. &c.

BY

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PREFACE.

LORD PENTLAND, after a long and stiff fight, has at last succeeded in getting this important measure, to which he has devoted so much time and trouble, placed on the Statute Book. Although the Act is different in many particulars from the Bill, it remains the same in essentials, so far at least as the amendment of the Crofters Acts and their extension to new holdings are concerned. The main differences are the provision of adequate compensation for damage or injury arising from the constitution of new holdings otherwise than by agreement, the creation of "statutory small tenants," and the retention of the administration of the Diseases of Animals Acts by the Board of Agriculture and Fisheries.

There can be no doubt that the country as a whole is in favour of the leading object—an increase in the number of small agricultural holdings. There has been controversy regarding the method adopted, and especially it has been urged that a system of purchase by instalment payments should have been followed. This is not the place, however, to enter on a discussion of the arguments on the one side or on the other. The Act is now part of the law of the land, and as such must be given a fair, even a generously fair trial. What the ultimate result will be, time will tell.

It may be noted that the introduction of the Bill has resulted in drawing town and country more closely together.

Lord Pentland is entitled to a large share of the credit for that result.

In the later stages of the Bill the Lord Advocate and Sir George Younger, Bart., M.P., rendered valuable and tactful services, which should be acknowledged.

This work is intended as an aid to administration, not by criticising either policy or method, but by explaining the provisions of the Act and the Crofters Acts from a practical and legal point of view. It is my hope that it may prove useful to the Board and Land Court as well as to landlords, factors, farmers (including landholders and statutory small tenants), and members of my own profession.

The introduction contains a general statement of the provisions of the Landholders Acts.

Following the Introduction, the Acts are printed separately with Annotations, containing practical observations, references to decisions, &c.

These again are followed by Appendices with forms, &c. &c.

I. C.

EDINBURGH, 1*st January* 1912.

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THE SMALL LANDHOLDERS (SCOTLAND) ACTS.

INTRODUCTION.

THE objects of the Small Landholders (Scotland) Act, 1911 (referred to as "the Act" throughout this introduction), which comes into operation on 1st April 1912, are—

1. To encourage the formation of small agricultural holdings in Scotland.
2. To amend the law relating to the tenure of such holdings (including crofters' holdings).
3. To establish a Board of Agriculture for Scotland and for other purposes connected therewith.

This introduction will be divided under the following heads, viz :—

I. Crofters' (now landholders) holdings and Cottars' Rights :

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(2.) Who may be landholders, p. 3.
(3.) Conditions affecting holdings within the meaning of the Act, p. 4.
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(*c*) for damage or injury directly attributable to the compulsory constitution or enlargement of holdings, p. 32;
(*d*) for damage or injury through holdings compulsorily constituted or enlarged becoming vacant, p. 32.

II. Statutory small tenants, p. 34;
III. The Land Court, p. 37; and
IV. The Board of Agriculture for Scotland, p. 44.

I.—Crofters' (now Landholders) Holdings and Cottars' Rights.

Leading Object.

The leading object of the Act, so far as it applies to small holdings, is to extend the Crofters Acts, with amendments, to the whole of Scotland. That object is given effect to by Section 1, which bears that "From and after the commencement of this Act and subject to the provisions thereof the Crofters Acts shall be read and construed as if the expression landholder' were substituted for the expression 'crofter' occurring therein, and shall have effect throughout Scotland."

Sec. 1, Act 1911.

The qualification in that Section, "subject to the provisions thereof," requires to be kept in mind.

The first general observation which falls to be made is that—

Under no condition (except in the Island of Lewis) can a holding (whether occupied by a landholder or by a statutory small tenant) under the Act exceed £50 of rent (without limit of area) or 50 acres (exclusive of any common pasture or grazing held or to be held with the holding) (without limit of rent). Sec. 26, Act 1911.

In the Island of Lewis, so far as within Ross and Cromarty, the limit is reduced to £30 or 30 acres. Sec. 27, Act 1911.

Who may be Landholders (formerly Crofters).

The persons who come under the Act (excepting those parts which apply to "statutory small tenants") are to be called "landholders," and under that title they include (keeping in view the above limits regarding rent and area)—

1. Existing crofters holding at the commencement of the Act (1st April 1912) under the Crofters Acts. Sec. 2, Act 1911.
2. Existing yearly tenants holding at the commencement of the Act.
3. Qualified leaseholders holding at the commencement of the Act.
4. New holders.

These are all to be "landholders," the first and second as from the commencement of the Act; the third from the termination of the lease, and the fourth as from the date of registration as new holders.

Existing yearly tenants and qualified leaseholders do not however necessarily become landholders. If the whole or the greater part of the buildings and other permanent improvements have been provided or paid for by the tenant or his predecessors in the same family without their having received payment or fair consideration therefor, the existing yearly tenant or qualified leaseholder becomes a "landholder," the former as from the commencement of the Act, and the latter as from the termination of the lease. Otherwise they Sec. 2 (3) (*a*), Act 1911.

Sec. 32 (11), Act 1911.

remain "statutory small tenants," but, as explained below, though in the first instance statutory small tenants, they may ultimately become landholders where the Land Court decide that the landlord has failed to maintain the buildings and permanent improvements required for the cultivation and reasonable equipment of the holding in so far as the tenant is not under obligation to do so.

Sec. 26 (8), Act 1911.

"Existing crofters," "existing yearly tenants," and "qualified leaseholders" embrace joint tenants being existing crofters, yearly tenants or qualified leaseholders, but not more than one person may be registered as a new holder in respect of any holding, and (without prejudice to the continuance of a joint tenancy through statutory successors) where at any time after the commencement of the Act a holding is held by a single landholder, or a holding which has been held in joint tenancy ceases to be so held, it shall not be competent for more than one person to be a landholder in respect of such holding.

Sec. 2 and Sec. 32, Act 1911.

Persons who become yearly tenants or leaseholders after the commencement of the Act, even of holdings within the limits stated in the Act, do not become landholders or statutory small tenants. This view was conceded by the Secretary for Scotland in the discussion in Committee in the House of Lords.

Conditions affecting Holdings within the meaning of the Act.

Shortly stated, a holding within the meaning of the Act may be (subject to the foregoing limits of rental and area), any piece of land which falls within the definition of a "holding" under Section 35 of the Agricultural Holdings (Scotland) Act, 1911, and it may even be carved out of a deer forest, but subject to the following conditions and restrictions, &c.:—

Sec. 26 (5), Act 1911.

Sec. 26, Act 1911.

(1.) A person shall not be held an existing yearly tenant or qualified leaseholder, or be eligible for registration as a new holder, in respect of any land—

(a) exceeding £50 of rent, unless such land (ex-

clusive of any common pasture or grazing land held therewith) does not exceed 50 acres:

(*b*) being garden ground only appurtenant to a house, or any land to which as the site of or as required for the protection of or for access to an ancient monument, &c., the Land Court determine that the Landholders Acts shall not apply:

(*c*) within the Parliamentary, Police or Municipal boundary of any Burgh or Police Burgh:

(*d*) being a market garden within the meaning of the Agricultural Holdings (Scotland) Act, 1908:

(*e*) being or forming part of any glebe or any small holding under the Small Holdings Act, 1892, or any allotment under the Allotments (Scotland) Act, 1892, or the Local Government (Scotland) Act, 1894:

(*f*) that is not a holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908.

(2.) Further, a person shall not be held an existing yearly tenant or qualified leaseholder, or, *except by agreement*, be eligible for registration as a new holder in respect of Sec. 26, Act 1911.

(*g*) any land being woodland or being or forming part of the home farm on any estate or of any policy or park, or of any pleasure ground or other land used for the amenity or convenience of any residence or farm steading; or being permanent grass park held for the purposes of a business or calling not primarily agricultural or pastoral, including that of butcher, cattle dealer, and the like:

(*h*) any land *bona fide* held and used for purposes of public recreation:

(*i*) any land acquired, whether compulsorily or by agreement, for any undertaking of a public nature under the authority of any Act of Parliament or any Order having the force of an Act of Parliament:

Sec. 26 (7), Act 1911.

(*j*) a holding referred to in Section 33 of the Act of 1886, namely: "Any holding or building let to a person during his continuance in any office, appointment or employment of the landlord or of any tenant of the land, any holding or building let at a nominal rent or without rent as a pension for former service, or on account of old age or poverty, or any holding or building let to a person during his tenure of any office, such as a minister of religion or schoolmaster, to any innkeeper or tradesman placed in the district by the landlord for the benefit of the neighbourhood.

(3) Except by agreement, a new holder cannot be registered—

Sec 7 (16), Act 1911.

(*a*) in respect of any land being or forming part of a farm not exceeding 150 acres occupied by a person who has no interest in any other farm, or in case of a farm so occupied which exceeds 150 acres but is wholly or mainly pastoral, not exceeding an annual value of £80, unless there be other land available in the neighbourhood of any existing village or township, in which case this limitation shall not apply: Provided that in certain events two or more new holders may be registered otherwise than by agreement in respect of the whole of such farm; or

(*b*) in respect of any land being or forming part of a farm occupied subject to a lease which was in force at Whitsunday 1911, or in the case

of land within the counties specified in Section 19 of the Act of 1886 at Whitsunday 1886, so long as the lease remains in force.

(4) A person cannot be registered as a new holder in respect of land belonging to more than one landlord or in respect of more than one holding, nor can he be held an existing yearly tenant or a qualified leaseholder in respect thereof unless such lands or holdings have been worked as one holding. Sec. 26 (2), Act 1911.

(5) For the purposes of the Act—

(*a*) A holding is deemed to include any right in pasture or grazing land held by the tenant or landholder whether alone or in common with others, and the site of any dwelling-house erected or to be erected on the holding, or held, or to be held therewith, and of any offices or other conveniences connected with such dwelling-house. Sec. 26 (1), Act 1911.

(*b*) The holding of an existing yearly tenant or qualified leaseholder shall not be deemed to include any lands or heritages at the commencement of the Act forming part of such holding and occupied by a sub-tenant of such yearly tenant or qualified leaseholder whether paying rent or not. It has been held that a sub-tenant is not a crofter within the meaning of the Act of 1886, (*Livingstone* v. *Beattie*, 1891, 18 R. 735; *Dalgleish* v. *Livingstone*, 1895, 22 R. 646). Sec. 26 (6), Act 1911.

Constitution of New Holdings (Sec. 7) by Agreement.

As above stated, not more than one person can be registered as a new holder in respect of any holding whether constituted by agreement or otherwise. The landlord of any land and any other person may agree that such person may apply to the Land Court to be registered as a new holder in respect of Sec. 7, Act 1911.

such land (subject to the conditions already stated), and on that application being made, and the registration being effected in the Landholders' Holdings Book, the provisions of the Act regarding landholders are to apply.

Under the foregoing provision, it is evidently anticipated that a large number of new holdings will be created voluntarily between landlord and tenant, but this seems at least doubtful, because the owner of a holding constituted by agreement could obtain no compensation for injury and damage, such as may be obtained under Section 17, where a holding, constituted otherwise than by agreement, ceases from any cause to be occupied by a landholder.

In order to help forward the constitution of new holdings, the Act imposes on the Commissioner for Small Holdings the duty to report, from time to time, to the Board after enquiry what demand for small holdings exists in any district, and, after consultation with the landlord or landlords,

(1.) what land is available to meet the demand without causing undue displacement of farm servants;
(2.) under what conditions the land is cultivated; and
(3.) what employment the land affords.

The Commissioner has also the duty, when he is satisfied that a demand exists and that suitable land is available, to negotiate with the landlords with a view to the adjustment of a scheme for registration, by agreement, of new holders in respect of the land.

Where a new holder is registered by agreement, the rent agreed between the landlord and the new holder, if it has been agreed upon for a specified period, is not to be altered by the Land Court during such period, and, in any case, it is not to be altered by the Land Court for a period of seven years from the term at which it first becomes payable. It will be noticed that there will be a hiatus, for which no provision is made, in the case where the agreed period is less than seven years.—(See note to Section 7.)

Sec. 7 (8), Act 1911.

Where the Board are of opinion that damage or injury will be done to any tenant, in respect that the land forms

part or the whole of his tenancy, they are required to pay such compensation as may be agreed.

Compulsory Constitution of New Holdings.

Where the Commissioner reports to the Board that the landlord refuses to negotiate, or where, after submitting to the landlord a scheme for the constitution of new holdings on the land (*i.e.* land available within the meaning of the Act), he reports that no agreement can be reached, the Board, after due notice and after hearing any person who desires to be heard, can intimate to the landlord and other parties concerned that it is in the public interest that new holdings—one or more—should be constituted on the land in accordance with the scheme, and that they propose to apply to the Land Court to make an Order or Orders for the constitution of new holdings on the land in accordance with the scheme, to be occupied by new holders at a fair rent and upon such terms and conditions as the Land Court consider just. Sec. 7 (4) (9), Act 1911.

Before making that application to the Land Court, the Board have not only to enquire through the Small Holdings Commissioner as to what land is available to meet the demand, &c., but they have also (not necessarily through the Commissioner) to take steps to ascertain what land has fallen or is about to fall out of lease where the present tenant is not an offerer, and they are required to preferably select such land (if otherwise suitable) for the constitution of new holdings otherwise than by agreement. Presumably the Board will accompany their application to the Land Court with the Report of the Commissioner, and a statement of the result of their enquiries regarding these matters. They may be expected to prepare a form of application for use in such cases. Sec. 7 (5), Act 1911.

The Land Court, before making any Order, must give all parties (doubtless including bondholders) having a right or interest in the land an opportunity of being heard. In the event of any of the parties making material and relevant statements which are disputed, it is thought that the Land Sec. 7 (10), Act 1911. Sec. 25 (3), Act 1911.

Court would have the duty, as they have the right, to hear any evidence that may be tendered for the purpose of ascertaining the facts.

Sec. 7 (11), Act 1911. The Land Court may thereafter, with due regard to the provisions of the Landholders Acts, by Order or Orders declare—

(*a*) In respect of what land, if any, specified in the scheme, one or more holdings for new holders may be constituted, and up to what date the power to constitute them, otherwise than by agreement, may be exercised;

(*b*) What is the fair rent for each new holding;

(*c*) What land, if any, specified in the scheme is to be excluded therefrom; and

(*d*) Whatever else may be necessary for the purpose of making the scheme effective and of adjusting the rights of all parties interested in or affected by the proceedings.

Sec. 7 (12), Act 1911. "In or after making such an Order the Land Court (without prejudice to their other powers) may do, provide or decide anything incidental to or consequential on such an Order as if it were an Order under Section 12 of the Act of 1886, and may, if they think fit, provide for the incorporation of any provisions of the Lands Clauses Acts which appears to them requisite for carrying the Order into effect."

Sec. 7 (13), Act 1911. After the Land Court have pronounced such an Order, the Board are entitled to proceed to make it effective by entering on the land, carrying out works and otherwise as may be required (due compensation to such amount as may be agreed, or, as in the case of dispute, may be determined by the Land Court, being made for surface damage), and they may negotiate with one or more duly qualified applicants with a view to their registration as new holders in respect of the land.

Sec. 7 (14), Act 1911. A person cannot, however, be registered, otherwise than by agreement, unless he satisfies the Board as to his ability to fulfil the obligations incumbent on him. Presumably he will require to show not only that he has sufficient funds for

properly stocking and working the holding, paying interest on any loan, &c., but also that he has some practical knowledge and experience of agriculture.

It will be seen that in case of compulsory constitution of new holdings the right to select the tenant, and to judge of his ability to fulfil his obligations, is taken out of the landlord's hand, subject only to this proviso, that the Board must give reasonable consideration to objections stated by the landlord to any applicant for a new holding, and *ceteris paribus* give a preference to applicants preferred by the landlord. Sec. 7 (15), Act 1911.

Enlargement of Holdings.

A single landholder, or two or more landholders, in any part of Scotland are entitled to apply to the Board stating that their landlords, after application made to them, have refused to let to the landholders concerned "available land" on "reasonable terms" for enlarging their holdings, and setting forth that in the parish or in an adjacent parish there is such land available for the enlargement of the holdings which they are willing to take on lease but which the landlords refuse to let on reasonable terms,—that is to say, on such terms as are usually obtained in the letting of land of the like quality and similarly situated in the same district for other than sporting purposes. Sec. 16 (1), Act 1911. Sec. 11, Act 1886.

On receiving such application, the Board are entitled to deal with it in the same way as they are empowered to act regarding the constitution of new holdings. They will no doubt in the first instance pass on the application to the Commissioner for Small Holdings that he may enquire into the facts and endeavour to effect some arrangement by agreement with the landlord. Sec. 16 (1), Act 1911. Sec. 7 (9), Act 1911.

Where the Commissioner reports that the landlord refuses to negotiate, or where, after submitting to him a scheme for the enlargement of the holding, he reports that no agreement can be reached, the Board, after due notice and after hearing any party who desires to be heard, may intimate to the landlord and to other parties concerned that it is in the Sec. 7 (9), Act 1911.

public interest that the holdings should be enlarged in accordance with the scheme, and that they propose to apply to the Land Court to make an Order or Orders for enlargement on such terms and conditions as the Land Court consider just.

The Land Court then deal with the application in substantially the same way as they are required to deal with applications for the constitution of new holdings.

Sec. 21, Act 1886.

Before making such an Order the Land Court must give all parties having a right or interest in the land an opportunity of being heard. They must intimate the application to the

Sec. 7 (9), Act 1911.

landlord or landlords, as also to the tenant or tenants and any other persons in the occupation of or otherwise interested in the land proposed to be added to the holdings, including heritable creditors holding securities over the same, and give notice of the time and place at which parties will be heard in regard to the application. They are to afford the landlord or landlords an opportunity of being heard, and to ascertain as far as possible how far the small size of the holding has been due to the action of the landlord or of the landholders, and to make such enquiry as they may consider necessary or proper. If after this procedure the Land Court are satisfied: (1) that there is land in the parish or in an adjacent parish available for enlarging the holdings; (2) that the landlord refuses to let the same for that purpose on

Sec. 12, Act 1886.

reasonable terms; (3) that the applicants are willing and able to pay a fair rent therefor; and (4) that in the event of an Order for the letting thereof being made the applicants are able to cultivate the same in so far as it consists of arable land and properly stock the same in so far as it consists of

Sec. 12, Act 1886.

pasture land, they may make an Order for a lease of the land, or such part or parts thereof as they think proper, to the applicants, or one or more of them, at a fair rent and upon such terms and conditions as they may consider just. The land so "leased" becomes part of, and under the same conditions as apply to the holding to which it is added.

The Court are entitled to visit the place to which the

application relates, and also, if they think fit, to call in the assistance of an assessor or assessors or of a valuer or valuers.

They will doubtless by Order declare: Sec. 7 (11), Act 1911.

In respect of what land, if any, specified in the scheme, the holdings may be enlarged, and up to what date the power to enlarge them otherwise than by agreement may be exercised;

What is the fair rent for the addition to the holding;

What land, if any, specified in the scheme (or application) is to be excluded therefrom; and

Whatever else may be necessary for the purpose of making the scheme effective and of adjusting the rights of all parties interested in or affected by the proceedings (including the erection and allocation of the cost of fencing of the land dealt with by their Order and the settling of questions as to boundaries between holdings including grazings, or between holdings including grazings and adjoining lands). Sec. 21, Act 1886. Sec. 7 (11) (*d*), Act 1911.

Land is not to be deemed available for this purpose otherwise than by agreement unless it is such land as might have been used for constituting new holdings, or, if arable land, unless it lies contiguous or near to land already in the occupancy of the applicant. Further, no addition can be made to the effect of making the rental or area greater than the rental or area allowable in the case of a new holder. Sec. 16 (2), Act 1911.

Nor is land to be held available if it forms part of a deer forest, and if the assignation of it for the purposes of the Act would seriously impair the use of the remainder as a deer forest, and would act injuriously on the prosperity of the inhabitants generally of the district in which the deer forest is situated. This, however, is qualified by the following new provision, viz.:—"Nothing in this Act shall operate to prevent the registration of a new holder or the enlargement of a holding (whether by agreement or otherwise in either case) in respect of land comprised in a deer forest or otherwise kept or preserved mainly or exclusively for sporting Sec. 13 (3) (*e*), Act 1886. Sec. 26 (5), Act 1911.

purposes, but subject always to the provisions of section seven and section sixteen of this Act, as the case may be." The reference to these sections clearly applies to the provision for giving compensation to landlords and tenants respectively for damage and injury resulting from the constitution or enlargement of the holdings.

Sec. 7 (16), Act 1911.

Nor is land to be deemed available for the purpose of the compulsory enlargement of holdings which is subject to a lease which was in force at Whitsunday 1911, or in the case of land within the Counties specified in section nineteen of the Act of 1886, at Whitsunday 1886, so long as the lease remains in force.

Thus, land in the Counties of Argyll. Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney and Shetland is not available for the compulsory enlargement of holdings (or even for the compulsory constitution of new holdings) so long as it remains subject to a lease which was in force at Whitsunday 1906, while outside of these Counties land is not available for the same purposes so long as it is subject to a lease which was in force at Whitsunday 1911. There may here be questions whether such lands will become available in any case unless and until there is an absolute change of tenancy, because by the Agricultural Holdings (Scotland) Act, 1908, it is provided that notwithstanding the expiration of the stipulated endurance of any lease the tenancy shall not come to an end unless written notice has been given by either party to the other of intention to bring the tenancy to an end—

(*a*) in the case of leases for three years and upwards, not less than one year nor more than two years before the termination of the lease; and

(*b*) in the case of leases from year to year, or for any other period less than three years, not less than six months before the termination of the lease.

Is it possible to draw a distinction between termination of lease and termination of tenancy? In answering that question it is necessary to keep in view that it has been

decided that a lease renewed by tacit relocation implies a new tenancy, and not merely a continuation or extension of the old one.

Land used for the enlargement of holdings by Order of the Land Court is deemed to be part of the holding to which it is added, and is to be subject to the provisions of the Landholders Acts (Sec. 15, Act 1886).

Landholders' Rights, Obligations, &c.

Security of Tenure.

So long as the landholder does not commit a breach of one or more "statutory conditions" the landlord cannot remove him from the holding, excepting in particular cases in which the landlord has right of resumption, as after explained.

The statutory conditions are as follows:— Sec. 1, Act 1886.

(*a*) Pay rent when due.

But the Land Court are entitled to stay proceedings for enforcing a decree for rent and for sale of the landholder's effects pending a decision on his application to have a fair rent fixed. Sec. 6 (4), Act 1886, and Sec. 2, Act 1887.

Further, (1) when one year's rent of the holding, but less than two years' rent, is due and unpaid the landholder is liable to be removed in manner provided by Section 27 of the Agricultural Holdings (Scotland) Act, 1883 (now Section 17 Agricultural Holdings (Scotland) Act, 1908); and (2) when two years' rent is due and unpaid or when the crofter has broken any of the statutory conditions, he is liable to be removed in manner provided by the 4th Section of the Act of Sederunt, anent removing, of 14th December 1756. In the former case the procedure is by an action of removing in the Sheriff Court concluding for the landholder's removal at Whitsunday or Martinmas next ensuing after the raising of the action. The landholder may escape the consequences of the action by paying the rent, or by finding caution for it and for one year's additional rent. In the latter case there must be an action of irritancy and summary removal. This irritancy can be purged only by paying the arrears Sec. 3, Act 1886. See forms in Appendix, p.

in full where the ground of action is non-payment of rent.

(*b*) Shall not execute any deed purporting to assign his tenancy.

Sec. 21, Act 1911.

This, however, is now subject to right to assign with the consent of the Land Court where he is unable to work his holding through illness, old age or infirmity.

(*c*) Shall not, to the prejudice of the landlord's interest, persistently injure the holding by the dilapidation of buildings, or after notice has been given by the landlord to the landholder not to commit or desist from the particular injury specified in such notice, by the deterioration of the soil.

(*d*) Not, without landlord's consent in writing, sub-divide the holding or sublet any part thereof, or erect or suffer to be erected thereon any dwelling-house other than in substitution for those already on the holding at the time of the passing of the Act of 1886. Provided that a landholder is not to be debarred from letting his dwelling-house to holiday visitors, and that the provision as to dwelling-houses shall not apply to a new holding, but he and his statutory successors shall not, without consent in writing of the landlord and the Board, erect more than one dwelling-house on the holding. The above expression "passing of the Act of 1886" in the application of this sub-section to landholders other than working crofters and their statutory successors is to be construed to mean the date at which the Landholders Acts first applied to the holding.—(Sec. 10 (2), Act 1911.)

Sec. 10 (2), Act 1911.

(*e*) Not persistently violate any written condition signed by him for the protection of landlord's interest or of neighbouring landholders, which is legally applicable to the holding, and which the Land Court shall find to be reasonable.

(*f*) Not do any act whereby he becomes notour bankrupt, nor grant Trust Deed for behoof of creditors.

Sec. 3, Act 1887.

A landholder in whose favour an Order has been granted under the Act of 1887 for stay of legal proceedings shall not, for the purposes of Section 1, Act 1886, be held to become notour bankrupt by reason of any decree obtained or diligence

done before or during the subsistence of the Order and for the rent to which such Order relates.

(*g*) Not obstruct landlord, or any person authorised by him in that behalf, in the exercise of any rights reserved or conferred by sub-section 7 of Section 1, Act 1886 (see p. 26, *infra*).

(*h*) Not, without landlord's consent, open any house on the holding for the sale of intoxicating liquors.

Section 10, Act 1911, also prescribes the following additional statutory condition, namely :— Sec. 10, Act 1911.

The landholder shall, by himself or his family, with or without hired labour, cultivate his holding without prejudice to the right to make such use thereof for subsidiary or auxiliary occupations as, in case of dispute, the Land Court may find to be reasonable and not inconsistent with the cultivation of the holding. Provided that the expression "cultivate" includes the use of a holding for horticulture or for any purpose of husbandry inclusive of the keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables and the like.

Further, Section 8 (2), Act 1911, bears that a landholder failing to satisfy the conditions of repayment of any loan granted by the Board may be removed as if he had broken a statutory condition. Sec. 8 (2), Act 1911.

So long then as these conditions are complied with, the landholder and his statutory successors (*i.e.* any person who in terms of the Landholders Acts has succeeded or may succeed to a holding whether as heir at law or legatee of his immediate predecessor being a crofter or landholder in occupation of the holding) shall be entitled to stay on in perpetuity, subject only to the landlord's rights of resumption in certain cases, which are referred to in this introduction under the heading "Reserved rights of landlord" (p. 26).

The landholder is not entitled to prevent the landlord, on his paying surface damage, from using for any estate purpose any springs of water rising in a holding and not required for the use thereof (Section 12, Act 1911), and he must assume the duties and liabilities of the landlord imposed under the Sec. 12, Act 1911.

Sec. 11, Act 1911.

Public Health (Scotland) Act, 1897, in respect of any nuisance or the provision of a water supply where the buildings yield no rent to the landlord.

The second important right conferred on landholders is that relating to

Fair Rent.

Fixing the Rent.

Secs. 5 and 6, Act 1886.

Sec. 7 (6), Act 1911.

The rent may be fixed or altered by agreement between landlord and landholder to such amount and for such period as may be agreed on, and the rent so agreed on must be payable till that period expires, and after such expiry so long as no different rent shall have been fixed by the Land Court on the application of either party, and so long as no new agreement between landlord and landholder shall have been made. The Land Court are to hear the parties, consider all the circumstances of the case, holding and district, take into consideration any permanent or unexhausted improvements on the holding and suitable thereto, and thereupon determine the fair rent.

Sec. 7 (6), Act 1911.

This provision applies substantially not only to existing crofters but also to the holders of new holdings registered by agreement between landlord and landholder.

Sec. 6, Act 1886, and Sec. 7 (6), Act 1911.

In no case, however, is it competent for the Land Court to alter an agreed on rent or a rent fixed by themselves till the lapse of a period of seven years from the term at which it first became payable.

Sec. 7 (11) (*b*), Act 1911.

In the case of new holdings constituted otherwise than by agreement the Land Court have the duty to fix a fair rent for each new holding so constituted, and the rent so fixed cannot be altered except by agreement till the lapse of seven years after it is fixed.

Sec. 6 (2), (3), Act 1886.

The rent fixed by the Land Court on the application of landlord or tenant is to be deemed to be the rent payable as from the first term of Whitsunday or Martinmas next succeeding the decision; but where the rent so fixed is less than the rent previously paid, the reduction is to apply back to the date when application to fix a fair rent was made.

As to sisting proceedings for payment of rent and for sale of effects, &c., see Section 6 (4), Act 1886, and Section 2, Act 1887.

What is a fair rent? Unhesitatingly, it must be the rent which could be obtained in the market under the conditions imposed by the Landholders Acts. If that were not so then there would have been, consistently with equity, provision for compensating the landlord for the loss inflicted on him by changing the basis of the annual value of his property. The underlying reason for this legislation was to secure fixity of tenure, and thus to encourage the crofters to effect improvements. That necessitated the provision of artificial machinery for adjusting the rent which could not be done in the market, especially seeing the buildings would generally be provided by the crofter. It was only to meet this necessity that the machinery was provided. The necessity did not require and did not justify any change in the basis of value; so much may be gathered from Section 6 of the Act of 1886, which indicates that rent should be such as is usually obtained for land of the like quality, and similarly situated in the same district for other than sporting purposes. It need scarcely be pointed out that the market rent might readily in the case of crofters be less than they had been called on to pay because they clung to their holdings, and seemed to prefer to fall into arrear rather than quit. The same conditions do not, however, exist elsewhere than in crofting districts, at any rate to the same extent.—(See also Sec. 32 (8), Act 1911.)

The Land Court are entitled when an application to fix a fair rent is before them to take into account all the facts of the case—to hear evidence as to the circumstances which led to arrears of rent, and to decide whether and to what extent the arrears should be paid, and whether in one sum or by instalments and at what date or dates. Sec. 6 (5), Act 1886.

It is plain that this provision was originally intended to meet the special circumstances in which the crofters found themselves at the passing of the Act of 1886. Under it a large amount of arrears has been written off. It is not likely that the provision will be of much avail in future.

The Crofters Commission have held that they are not entitled to so deal with arrears of "fair rents."

Rent payable under statutory conditions.

Sec. 13, Act 1911.

The rent payable as one of the statutory conditions is what is described as the present rent, namely, the yearly rent, including money and any prestations other than money—

(*a*) In the case of existing crofters, payable for the year current at the passing of the Act of 1886, or, where the rent so payable has been altered in terms of that Act, payable for the year current at the commencement of the Act of 1911;

(*b*) In the case of existing yearly tenants, payable for the year current at the commencement of the Act; and

(*c*) In the case of qualified leaseholders or statutory small tenants becoming landholders, and in the case of new holders, and in the case of landholders whose holdings are enlarged, payable or fixed in respect of the last year of the lease or tenancy, or at the date of registration, or at the date of enlargement.

In each case unless and until the present rent is altered in manner provided by the Landholders Acts, as above explained, as the case may be.

Right to Renounce.

Sec. 7, Act 1886.

Sec. 18, Act 1911.

The landholder is entitled upon one year's notice in writing to the landlord, to renounce his tenancy as at any term of Whitsunday or Martinmas, but such notice is not, without the consent of the Land Court, to be effective unless within two months from the date of notice the landlord or landholder intimates same in writing to the Board. Further, the landholder is not, without like consent, entitled to renounce so long as any liability owing by him to the Board is not wholly discharged.—(Section 18, Act 1911.)

Right to Assign.

Sec. 1, Act 1886.

Sec. 21, Act 1911

It will be noted that one of the original statutory conditions entirely prohibited assignation of tenancy, but now the landholder may assign to a member of his family, being his wife,

or any person who, failing nearer heirs, would succeed him in the case of intestacy, provided he obtain the consent of the Land Court on the ground of his being unable to work his holding through illness, old age or infirmity.

Right of Bequest.

In case of intestacy the holding will descend to the landholders heir-at-law.—(See Section 22, Act 1911.)

The landholder may, however, by will or other testamentary writing, bequeath his right to his holding to one person, being a member of same family, *i.e.* his wife, or any person who, failing nearer heirs, would succeed him in case of intestacy, subject however to the right of the landlord to object, and to obtain the Land Court's decision as to whether the bequest ought to have effect. The Land Court will have to be satisfied, as in the case of a new holder, that the legatee is able to fulfil the obligations encumbent on him (Section 7 (14), Act 1911), but in view of the terms of sub-section 15 of that Section they will no doubt take into consideration reasonable objections stated by the landlord, just as the Sheriff is required to do in similar circumstances under Section 19 of the Agricultural Holdings (Scotland) Act, 1908. Sec. 16, Act 1886.

If the legatee accepts the bequest, and the bequest is not declared to be null and void, the legatee is entitled to possess on the same terms and conditions as if he had been the nearest heir of the landholder.

If, however, the legatee does not accept, or if the bequest be declared null and void, the right to the holding descends to the heir of the landholder in the same manner as if the bequest had not been made.

In case of any legatee or heir-at-law more distant than wife, son, grandson, daughter, granddaughter, brother or son-in-law, it is competent to the landlord on his own part or on the part of neighbouring landholders to represent that for the purpose of enlarging their holding or holdings the holding ought to be added to them. In that event the Land Court have to decide what is to be done with the holding. Sec. 16, Act 1886.

Where, owing to failure of landholder to bequeath his Sec. 22, Act 1911.

tenancy, or of the legatee to accept the bequest, the right of tenancy devolves upon the heir-at-law, whose address is not known or cannot be ascertained, and further, where the name and address of the next heir are not known or cannot be ascertained, and no application is made by them with regard to the succession to the holding during six months after the death of the last landholder, the landlord is entitled, without the consent of the Land Court, forthwith to let the holding.

Loans and Gifts.

Under the Congested Districts Act the Congested Districts Board had certain powers to give financial assistance to holders in Congested Districts. This power is now conferred on the Scottish Board of Agriculture under the Landholders Acts, and may be exercised throughout Scotland.

Sec. 7 (7), Act 1911.

Where the Board are of opinion, after consideration of a report by the Commissioner for Small Holdings, that assistance should be provided for dividing, fencing or otherwise preparing or adapting the land, making occupation roads or other works, such as for drainage or water supply, or erecting or adapting a dwelling-house or dwelling-houses or other buildings, or for any similar purpose, they may provide such assistance by way of loan or (except as regarding dwelling-houses or other buildings) by way of gift, and subject to such conditions, as they may prescribe.

Sec. 9, Act 1911.

Further, the Board may, where they are of opinion that assistance should be provided for improvement or rebuilding of dwelling-houses or other buildings of landholders or cottars, provide such assistance by way of loan, subject to the like conditions and incidents as loans made under Section 7, and if made to a landholder, subject to the provisions of Section 8 of the Act.

Sec. 8, Act 1911.

Section 8 makes provision for recording any agreement for such a loan in the Landholders Holdings Book with the effect of assigning to the Board the landholders' rights to claim compensation for permanent improvements, in security.

Sec. 23, Act 1911.

In the event of the landholder renouncing or being removed from his holding, while in arrears of rent to the

landlord, the landlord is entitled to set off such arrears of rent against any sum due either to the landholder or to the Board for improvements made on the holding.

Use of Water.

The landholder is entitled to use of water springs arising on the holding, and to claim surface damage caused by landlord in using any surplus. If the landholder requires all the water the landlord cannot take any, and in the event of dispute whether there is a surplus the Land Court must settle the dispute. They also fix the amount payable for surface damage. Sec. 12, Act 1911.

Right to damage by Game.

Sub-Section 7 of Section 1 Act of 1886, provides that the landholder should not obstruct the landlord or any person authorised by him in that behalf in the exercise of reserved rights, including, *inter alia*, hunting, shooting, fishing or taking game, including hares, rabbits, &c. on the holding. It is now declared (Section 10 (3), Act 1911) that nothing in that sub-section shall be construed as precluding a landholder from recovering compensation for damage by game under Section 9 of the Agricultural Holdings (Scotland) Act, 1908, and that that Section shall apply accordingly with the substitution of the Land Court for arbitration. The first subsection of Section 9 of the Agricultural Holdings (Scotland) Act, 1908, is as follows: "Where a tenant of a holding has sustained damage to his crops from game the right to kill and take which is vested neither in him nor in any one claiming under him other than the landlord, and which the tenant has not permission in writing to kill, he shall, subject as hereinafter mentioned, be entitled to compensation from his landlord for such damage if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends, and any agreement to the contrary or in limitation of such compensation, shall be void." Sec. 10 (3), Act 1911.

The Section proceeds to provide that the compensation payable under it shall, in default of agreement made after

the damage has been suffered, be determined by arbitration (now by the Land Court, in the case of claims by landholders). The whole procedure laid down by the Section must be followed, the only difference being that the compensation is to be fixed by the Land Court instead of by an arbiter.—(See Notes to Section 10, Act 1911.)

Right to call on Land Court to settle matters.

The landholder is entitled to call on the Land Court to do and settle quite a number of matters, including—

(*a*) The determination of any question whether a written condition for protection of the interests of the landlord or of neighbouring landholders is reasonable (Section 1, Act 1886).

(*b*) Settle summarily any question relating to the boundaries or marches between landholders' holdings, including grazings, or between landholders' holdings, including grazings and adjoining lands (Section 21, Act 1886).

(*c*) Make orders with respect to the erection and maintenance of fencing of land, and to decern that the expense of such erection and maintenance shall be paid by the person or persons interested (Section 21, Act 1886).

(*d*) Regulate use of seaweed, peat and thatching materials (Section 12, Act 1886).

(*e*) Allocate common pasturage (Section 12, Act 1886).

(*f*) Prescribe and enforce regulations for use of common pasturage and grazing rights (Section 24, Act 1911).

(*g*) Obtain, at quitting, compensation for permanent improvements, in accordance with Section 8 of the Act of 1886. That Section provides that when a landholder renounces his tenancy or is removed he shall be entitled to compensation for permanent improvements as specified in the Schedule, provided that the improvements are—

(1) suitable to the holding;

(2) have been executed or paid for by the landholder or his predecessors in the same family;

(3) have not been executed in virtue of any specific agreement in writing under which he was bound to execute them.

Section 8 (1), Act 1911, provides that where the Board have given assistance to a landholder by way of loan towards effecting permanent improvements, the agreement for the loan on being recorded in the Landholders' Book operates to transfer to the Board the landholder's right to compensation for the improvements up to the amount of his outstanding liability.

Section 23, Act 1911, provides that if the landlord either renounces or is removed while owing arrears of rent, the landlord shall be entitled to set off such arrears and also the rent of the awaygoing crop against any sum found to be due to the landholder or to the Board for improvements as aforesaid.

(*h*) Obtain compensation for improvements under the Agricultural Holdings (Scotland) Act, 1908 (Sections 8 and 31, Act 1886).

The landholder is also entitled to prevent the landlord from taking timber or other trees planted by the landholder and his predecessors, or that may be necessary for shelter on the holding (Section 1 (7), Act 1886).

Rights of Cottars.

A cottar is defined under the Act of 1886 as the occupier of a dwelling-house situated in a crofting parish, with or without land, who pays no rent to the landlord, as also the tenant from year to year of a dwelling-house situated in a crofting parish who resides therein, and who pays to the landlord therefor an annual rent not exceeding £6 in money, whether with or without garden ground, but without arable or pasture land. Sec. 34, Act 1886.

When a cottar, if not paying rent, is removed from his holding and any land or buildings occupied in connection therewith, or, if paying rent, renounces his tenancy or is removed, he is entitled to compensation for any permanent improvements provided that— Sec. 9, Act 1886.

(*a*) Such improvements are suitable to the subject.

(*b*) Such improvements have been effected or paid for by the cottar or his predecessors in the same family.

(*c*) Such improvements have not been executed in virtue of any specific agreement in writing under which he was bound to execute them.

It falls to the Land Court to determine the amount of the compensation payable. Although the Crofters Acts are to apply to the whole of Scotland, it is thought that they only apply to cottars within the crofting parishes.—(See note to Section 34, Act 1886, p. 145.)

Reserved Rights of Landlord.

Notwithstanding the extension of the rights of the landholder the fee of the property remains with the landlord. When the Crofters Act was introduced it was never suggested that its terms were not exceptional, but it was argued that these terms in restricting the landlord's rights did no more than legalise a long established custom confined to the crofting districts, where it was said—and with some measure of truth—that the crofters had some sort of customary fixity of tenure and that they provided all the buildings. That cannot be said as regards the ordinary small holdings throughout Scotland. Consequently the Small Landholders (Scotland) Act, in extending the provisions of the Crofters Act throughout Scotland, founds on a limited distinction between existing small holdings (other than existing crofts) on which the landlord has and has not provided the buildings. In the former case the tenants do not become landholders but are called statutory small tenants; in the latter case they become landholders.

The underlying idea has been to give the small holder as many inducements as possible to effect improvements without actually making him his own landlord. Obviously that could only be done by imposing some restrictions on the landlord and his rights and privileges. Whatever may be thought about the propriety or wisdom of this course, it is so far satisfactory that provision is made, in the case at all events of the compulsory constitution or enlargement of holdings, for paying compensation for consequent loss or damage sustained by the landlord and tenant respectively.

The landlord may be said to have the following reserved rights, namely:—

1. Right to the fee of his estate under the restrictions imposed by Parliament.

2. Right to fix rent where the tenant agrees; and to enforce any condition for his protection or for protection of neighbouring landholders agreed to in writing by the landholder, but subject to approval of the Land Court (Section 5 and Section 1, Act 1886).

3. Right to have rent fixed by the Land Court where the tenant does not agree (Section 6, Act 1886).

4. Right to be relieved by landholder of obligations and liabilities under the Public Health (Scotland) Act, 1897, with reference to the removal or remedy of a nuisance or the provision of a water supply, so long as the landlord receives no rent or other consideration in respect of the buildings or other premises (Section 11, Act 1911).

5. The right by himself or any persons authorised by him (subject to paying reasonable compensation for any damage occasioned thereby) to enter upon a holding for any of the purposes following, namely:—

Mining, or taking minerals or digging or searching for minerals.

Quarrying, or taking stone, marble, gravel, sand, clay, slate or other workable mineral.

Cutting or taking timber or peats, excepting timber and other trees planted by the crofter or his predecessors in the holding being of the same family, or that may be necessary for ornament or shelter, and excepting also such peats as may be required for the use of the holding.

Opening or making roads, fences, drains and water courses.

Passing and re-passing to and from the shore of the sea or any loch with or without horses and carriages for exercising any right of property or other right belonging to the landlord.

Viewing or examining at reasonable times the state of the holding and all buildings and improvements thereon.

Hunting, shooting, fishing, or taking game or fish, wild birds or vermin. The word "game" for the purposes of this sub-section means deer, hares, rabbits, pheasants, partridges, quails, landrails, grouse, black game, capercailzie, ptarmigan, woodcock, snipe, wild duck, widgeon and teal.

6. Right to prevent the landholder from opening any house for the sale of excisable liquors on the holding.

7. Right to remove the landholder when he breaks a statutory condition (see p. 15, *supra*).

8. Power to resume holding where the Land Court are satisfied that he desires to do so for some reasonable purpose having regard to the good of the holding or of the estate, including

(1) The using, letting or feuing the land.
(2) For building or dwellings.
(3) For small allotments.
(4) For harbours, piers, boat shelters or other buildings.
(5) For churches or other places of religious worship.
(6) For schools.
(7) For planting.
(8) For roads practicable for carriages from the croft or crofts to the high road or the seashore (Section 2, Act 1886).

9. Also for feuing land for the general development of the estate or the occupation of a holding, being his only landed estate, by a landlord for the purpose of personally residing thereon or for protection of an ancient monument, &c. (Section 19, Act 1911).

10. Power to let vacant holdings with or without consent of Board (as the case may require), as stated in Sections 17 and 22, Act 1911.

11. Obtain compensation where the Land Court prevent letting of holding for a time (Section 17, Act 1911).

12. Obtain compensation for damage or injury arising from the constitution of new holdings (Section 7, Act 1911), and for damage or injury from holding, compulsorily constituted, becoming vacant (Section 17, Act 1911).

13. Right to have his selection of new tenant preferred (Section 7, Act 1911).

14. May arrange with a new tenant about registering his new holding and amount of rent payable for a period (Section 7, Act 1911).

15. May have loan originally granted to landholder continued to himself (Section 8 (1), Act 1911).

16. Right to have claim for compensation for damage and injury from compulsory constitution or enlargement of new holdings, or from such holdings becoming vacant, fixed by the Land Court, or in his option by an arbiter (Sections 7 and 17, Act 1911).

17. Right to have Special Case stated on any question of law arising in any case in which he is interested before the Land Court (Section 25 (2), Act 1911).

Compensation Claims.

These are—

(*a*) Compensation for permanent improvements comprised in the Schedule to the Act of 1886.

(*b*) Compensation for improvements under the Agricultural Holdings (Scotland) Act, 1908.

(*c*) Compensation for damage or injury to landlord or tenant consequent on and directly attributable to the constitution of new holdings.

(*d*) Compensation for damage or injury done by the compulsory constitution or enlargement of holdings or by these holdings becoming vacant.

(*a*) *Compensation for Permanent Improvements.*

On his renunciation of tenancy or removal from the holding, the landholder has the right to claim compensation for permanent improvements (specified in Schedule to Act of 1886) suitable to the holding, executed or paid for by himself or his predecessors in the same family, provided he was under no written obligation with the landlord to execute them. Subject to the restrictions under Section 1 (4), Act 1886, and Section 10 (2), Act 1911, the landholder is free, at his own pleasure or caprice, to effect any of the improvements

Sec. 8, Act 1886

specified in the Schedule, and to claim compensation at quitting, as already stated. An attempt was once made to claim compensation on the death of a landholder (notwithstanding that the heir was ready to take up the succession), but this was disallowed.

Sec. 9, Act 1886.

A cottar not paying rent, if removed from his dwelling and any land or buildings occupied by him in connection therewith, or where paying rent, if he renounces his tenancy or is removed, is entitled to compensation for permanent improvements embraced within the Schedule if the improvements—

(*a*) are suitable to the subject:
(*b*) have been executed or paid for by the cottar or his predecessors in the same family:
(*c*) have not been executed under specific agreement in writing.

Neither landholder nor cottar is entitled to compensation for buildings erected in violation of any interdict or other judicial order.

Sec. 10, Act 1886.

The improvements are to be valued at such sum as represents their value to an incoming tenant under deduction of the value of any assistance or consideration allowed by the landlord for making the improvement, and for any deterioration permitted or committed by the tenant during the previous four years. It is somewhat remarkable that no where in the Act of 1886 is there any express provision or machinery provided for fixing the amount of this compensation. Section 31 of that Act merely relates to compensation under the Agricultural Holdings Act of 1883 (now 1908.) As, however, it is provided under the Schedule that compensation is to be allowed for all other improvements which, in the judgment of the Crofters Commission (now the Land Court), shall add to the value of the holding to an incoming tenant, it has been assumed and held that the Crofters Commission had the power to fix the compensation, and it is probable the Land Court will proceed on the same lines.—(*M'Dougal* v. *M'Alister*, 1890, 17 R. 555.)

(*b*) *Compensation under the Agricultural Holdings (Scotland) Act,* 1883 (*now* 1908).

This Act provides compensation for three classes of improvements, viz. :—

(1.) Permanent improvements (Part I., First Schedule).
(2.) Drainage improvements (Part II., do.)
(3.) Exhaustible improvements (Part III., do.), such as the application of manures and feeding stuffs, &c.

Excepting as regards those permanent improvements specified in the Schedule to the Act of 1886, it is of course necessary for the landholder to follow strictly the provisions of the Agricultural Holdings (Scotland) Act, 1908, if he is to receive compensation under the latter Act. In particular, as regards permanent improvements (excepting as above) he requires to receive the written consent of the landlord previous to effecting the improvements. Sec. 2 A.H. (Scot.) Act, 1908.

As regards drainage improvements he requires to give the landlord not more than three nor less than two months' notice and particulars of the operations he proposes, so that the landlord may have an opportunity of doing the work himself and charging the landholder interest on the expense. In the event of the landlord not undertaking the work the landholder can then do the work and set up a claim at quitting in respect of the value of the improvement to an incoming tenant. Sec. 3 A.H. (Scot.) Act, 1908.

As regards improvements of the third class the landholder can effect them without any previous consent or intimation.

It will be noted that the Schedule to the Act of 1886 provides that a landholder is entitled to compensation for all other improvements which, in the judgment of the Land Court, shall add to the value of the holding to an incoming tenant. These other improvements, however, must clearly be of the nature of permanent improvements, because the whole Schedule is headed "Permanent Improvements" Accordingly, it is thought that while the Land Court could allow compensation for any permanent improvements (whether included in the Schedule to the Agricultural Holdings Act of 1908 or not), and that without the previous written consent of the

landlord having been obtained, it is not competent for them to allow compensation for drainage or exhaustible improvements already referred to unless the procedure of that Act has all been complied with. In particular there must be notice as above stated in the case of drainage, and the claim must be made before the termination of the tenancy.

Sec. 6 (2) A.H. (Scot.) Act, 1908.

(*c*) *Compensation for Damage or Injury directly attributable to the Compulsory Constitution or Enlargement of Holdings.*

This compensation is for damage or injury as follows, done

Sec. 7 (11), Act 1911.

(*a*) To the letting value of the land to be occupied by a new holder or new holders.

(*b*) To the letting value of any farm of which such land forms part.

(*c*) To any tenant in respect that the land forms part or the whole of his tenancy.

(*d*) To any landlord either in respect of an obligation to take over sheep stock at a valuation, or in respect of any depreciation in the value of the estate of which the land forms part.

The Land Court are to require the Board to pay such compensation, and they are to do so and fix the amount at the time when a scheme for constituting or enlarging new holdings is about to be proceeded with.

There is provision, however, as explained below, for the compensation being fixed by an arbiter instead of by the Land Court, and also for further compensation being fixed by the Land Court or by an arbiter, and ordered to be paid by the Board in certain cases where a holding, constituted or enlarged otherwise than by agreement, ceases to be occupied by a landholder.

For nature of possible claims, see notes to Section 7, p. 72.

(*d*) *Compensation for Damage or Injury through Holdings becoming vacant.*

Where, by reason of renunciation, removal, failure of a statutory successor or otherwise, a holding has at any time ceased, or is about to cease to be held by a landholder, and where the holding was otherwise than by agreement con-

stituted as a new holding or enlarged, the Land Court, on an application by the landlord, after hearing the Board, are required to assess any damage or injury done by the constitution or enlargement of the holding to the landlord— Sec. 17, Act 1911.

(*a*) through non-payment of rent in respect of the holding;

(*b*) through depreciation in the letting value of the land comprised in the holding; and

(*c*) through the imposition of liabilities in respect of or the payment of compensation for permanent improvements thereon.

This compensation is not to be paid, however, where the holding ceases to be held by a landholder by reason of resumption by the landlord, or by reason of the sale of the holding to the landholder.

In the cases (*b*) and (*c*) above referred to, the Land Court, before fixing the amount of compensation, must hear parties, and give them an opportunity of leading evidence if they desire to do so. Sec. 7 (11), Act 1911.

In both of these cases, where the compensation claimed exceeds £300, the claimant has a right to have the matter dealt with by arbitration instead of by the Land Court, provided that within twenty-one days after receipt from the Land Court of an order for the compulsory constitution or compulsory enlargement of a holding, he intimates to the Land Court and to the Board that he claims compensation to an amount exceeding £300, and that he desires to have the matter settled by arbitration instead of the Land Court. Thereupon, failing agreement with the Board as to the appointment of an arbiter, the claimant may apply to the Lord Ordinary on the Bills for such appointment, the arbiter's award being to be final and binding on the Board in the event of the scheme being proceeded with, but if no final award is given by the arbiter within three months from the date of his appointment, the questions relating to damage or injury, and the amount of compensation, are to be decided by the Land Court. In dealing with the claim, the arbiter Sec. 7 (11), Act 1911. Sec. 17, Act 1911.

and the Land Court are not to make any additional allowance on account of the constitution or enlargement of any holding being compulsory.

The Arbitration (Scotland) Act, 1894, is not to apply to such arbitrations, but the second Schedule to the Agricultural Holdings (Scotland) Act, 1908, is to apply, with the exception of paragraphs 1, 5, 10, 11 and 16 thereof, and with the substitution of the Lord Ordinary for the Sheriff and the Auditors of the Court of Session for the Auditors of the Sheriff Court, subject to the provision that in the event of the scheme not being proceeded with the expenses of parties reasonably incurred in connection with the arbitration, as taxed and allowed by the Auditor of the Court of Session, are to be paid by the Board. Under the second Schedule to the Agricultural Holdings (Scotland) Act, 1908, there may be an appeal to the Sheriff by stated case on any question of law arising in the arbitration, but the Sheriff's decision appears to be final notwithstanding that by section 11 (3) of that Act the Sheriff's decision may be appealed against to the Court of Session. It is thought that only the Schedule and not the Act applies here.

See Appendix.

II.—Statutory Small Tenants.

This is a class of new tenants for the first time brought into existence under the Act. They occupy an intermediate place between ordinary agricultural tenants on the one hand and landholders on the other hand. While, however, they cease for ever to be ordinary agricultural tenants they may ultimately become landholders.

A holding occupied by a statutory small tenant is subject to precisely the same limitations of rental and area as the holding of a landholder.

The effect of the Act of 1911 is that practically all holdings within these limitations in existence at the commencement of the Act must be or become either holdings of landholders or of statutory small holders.

Sec. 32 (11), Act 1911.

The essential difference between the holding of a statutory small tenant and that of a landholder is that in the former

case the buildings and permanent equipment have been provided, and are to continue to be provided and maintained by the landlord in so far as the tenant is not by law or express contract bound to do so. As soon as there is failure to do this by the landlord, assuming that after being given an opportunity he does not remedy the failure, the statutory small tenant is entitled to have an order of the Land Court to declare that he is a landholder, with succession to his heirs and legatees. Until such an order is pronounced the provisions (subject to certain exceptions) of the Landholders Acts, so far as applicable to landholders, do not apply to statutory small tenants.

There are, however, some important restrictions imposed by the Act with reference to statutory small tenants, viz :—

(1) The holding of a statutory small tenant cannot be merged in or amalgamated with any other holding as defined in the Agricultural Holdings (Scotland) Act, 1908, except with the sanction of the Board. Sec. 32 (3), Act 1911.

Whether this would prevent a person holding under the latter Act from also being tenant of a statutory small holding held as a separate subject is a question likely to arise. If the holdings be not contiguous it is thought this would not involve merging or amalgamation. The Act nowhere states that a statutory small tenant is only to occupy one holding. Apparently the main point is that the statutory small holding must be maintained as a separate entity, and subject to the provisions applicable to statutory small tenancies.

(2) Except where the landlord satisfies the Land Court that there is reasonable ground of objection to a statutory small tenant, the tenant for the time being, notwithstanding any agreement to the contrary, is entitled on any determination of the tenancy to a renewal thereof on certain terms and conditions.

It is declared that the Agricultural Holdings (Scotland)

Acts, 1908 and 1910, shall apply in the case of the tenancy of a statutory small tenant in the same manner as if the tenancy were a lease, and that for the purposes of these Acts and otherwise the tenancy, as renewed from time to time, shall be deemed to be a lease current for the period of renewal. This is subject to the provision that in the second Schedule to that Act of 1908 the Land Court is to be substituted for the Board, and that where in terms of that Schedule a person is nominated as arbiter by the Land Court his remuneration shall be paid by that Court.

Failing agreement, the landlord or tenant may have an equitable rent, or the period for which the tenancy is to be renewed, determined by the Land Court.

Sec. 32, Act 1911.

In determining the rent the Land Court are required, as far as practicable, to act on their own knowledge and experience, taking into consideration all the circumstances of the case, holding and district, including the previous rent, the proposed conditions of renewed tenancy (which, failing agreement between landlord and tenant otherwise, must be held to be those of the expiring tenancy), the improvements made by landlord and tenant respectively, and the then condition and value of such improvements; the rent to be such as would, in the arbiter's opinion, be an equitable rent for the holding between the landlord and tenant as a willing lessor and a willing lessee. It is expressly provided, however, that the Land Court shall allow no rent in respect of any improvements made by or at the expense of the tenant or any predecessor in title for which he or his predecessor, as the case may be, has not received payment or fair consideration from the landlord or his predecessor.

Sec. 32 (9), Act 1911.

Unless otherwise agreed between landlord and tenant, and subject to the right to have equitable rent and period of tenancy fixed by the Land Court as already explained, the terms and conditions of the renewed tenancy are to be those of the determining tenancy, as if the tenancy had been continued for the full period of renewal under tacit relocation, and the tenant is entitled to renew on these terms and conditions.

The procedure for having an equitable rent fixed, and as to arrears of rent, is to be that of Sections 6 and 20 of the Act of 1886, and Section 2 of the Act of 1887, down to the word "summarily." Sec. 32 (14), Act 1911.

Generally, except as above indicated, a statutory small tenant is in the same position with regard to the law of landlord and tenant as an ordinary agricultural tenant, and in particular the Agricultural Holdings (Scotland) Act, 1908 (amended as above), the Ground Game Acts, &c., apply to his tenancy.

III.—The Scottish Land Court.

Its Constitution.

This Court is new in more than in name. It takes the place of the Crofters Commission but has more extensive powers and duties. It operates throughout Scotland.

It is a body corporate with the common seal. All Courts of Justice are required to take judicial notice of that seal, and any order purporting to be signed with it is to be received as evidence without further proof. Sec. 25, Act 1911.

The Court is to consist of five members appointed by His Majesty on the recommendation of the Secretary for Scotland. The Chairman, who is to have the status of a Judge of the Court of Session, must be an Advocate of the Scottish Bar of not less than ten years' standing. One of the members must be able to speak the Gaelic language. Apparently this condition would be met if the Chairman were able to speak the Gaelic language. Sec. 3, Act 1911.

The Secretary for Scotland has power, subject to certain conditions—

(1) to remove any member for inability or misbehaviour;
(2) to appoint a temporary substitute to act when the legal member is temporarily unable to attend; and
(3) to appoint a chief clerk to the Land Court, and that Court may appoint such assessors, surveyors, law

agents, valuers, clerks, messengers, and other persons as the Treasury, on the recommendation of the Secretary for Scotland, may sanction.

The remuneration of the members and staff of the Land Court is as follows:—

Chairman, not exceeding £2000 a year.

Other members of the Court not exceeding £1200 a year.

The chief Clerk and other officers are to receive such remuneration as the Treasury may sanction.

Its Powers and Duties.

Sec. 25, Act 1911.

Three members are a quorum, but the Court may delegate any of their powers to any one or more members with or without assistance of land valuers, assessors or other skilled persons. But any determination under such delegation is subject to review on appeal by three or more members (including, where the Court of Review consists of three members, not more than one member who was a party to such determination) sitting together, one of whom must be the Chairman of the Land Court.

For the purposes of the Landholders Acts (*an important limitation which must not be lost sight of*) the Court are empowered to hear and determine all matters whether of law or of fact, and (subject to rights of appeal as after stated) no other Court is to review their orders or determinations. They may ascertain the facts of any case by hearing parties and examining witnesses or by evidence, or by such other mode of enquiry as they may think appropriate, and may require the production of books, papers, plans and documents relating to the case, and they may summon and examine on oath such witnesses as they think fit to call or allow to appear before them. They are also empowered to determine the amount of the expenses in any proceedings before them and the proportions to be borne by the different parties. The Chairman may punish a person guilty of contempt of Court. They cannot pronounce a decree on which execution

and diligence may proceed. That may, however, be done by the Sheriff on presentation of the order of the Land Court. If he be satisfied that the order has been duly recorded in the Landholders' Holdings Book, he is required to pronounce decree in conformity with the order, and execution may then proceed on the decree. In this matter the Sheriff merely acts ministerially.

From and after 1st April 1912, the date of commencement of the Act, all the powers and duties of the Crofters Commission are transferred to and vested in the Land Court. These powers and duties have, however, been greatly extended, and under them the Court may— Sec. 28, Act 1911.

1. Settle any question as to whether a person is a landholder (Section 21, Act 1886).
2. Fix fair rents of landholders' holdings (6, Act 1886).
3. Deal with applications by Board for (*a*) constitution of new holdings, and (*b*) enlargement of holdings (7 and 16, Act 1911, and 11, Act 1886).
4. Sist proceedings for removal of landholder and sale of effects pending the fixing of a fair rent, &c. (6, Act 1886, and 2, Act 1887).
5. Decide questions as to arrears of rent (2, Act 1887).
6. Fix abatements of rent to be given to tenants whose land is taken to constitute or enlarge holdings (14, Act 1886, and 7 (11) (*d*), Act 1911).
7. Authorise resumption of holding on conditions (2, Act 1886; 14, Act 1911).
8. Consent to termination of tenancy on twelve months' notice though intimation not sent to them within two months of date of notice, or though landholders liability to Board not fully discharged (18, Act 1911).
9. Authorise landholder who is unable from illness, old age or infirmity to cultivate holding, to assign same on terms and conditions to a member of his family (21, Act 1911).
10. Assign holding to neighbouring landholders where succession or bequest annulled by them for that purpose,

and where landlord fails to add holding to adjoining holdings (16, Act 1886), also where landholder removed for breach of conditions of loan (8(2), Act 1911).

11. Order removal of landholder who is in breach of conditions for repayment of loan (8 (2), 1911).

12. Determine during what period and subject to what conditions landlord may not, without Board's consent, let a vacant holding, otherwise than to a neighbouring landholder for enlargement of his holding or to a new holder (17, Act 1911).

13. Consent, on lapse of six months after death of last landholder, to letting holding where it is vacant through not having been bequeathed or heir not being traced (22, Act 1911).

14. Value improvements under the Acts as specified in Schedule to Act 1886, and decide what improvements, other than those specified in that Schedule, add to the value of the holding to an incoming tenant.

15. Value improvements under the Agricultural Holdings (Scotland) Act, 1908 (31, Act 1886).

16. Value damage by game under Section 9, Agricultural Holdings (Scotland) Act, 1908; (10 (3), Act 1911).

17. Fix compensation payable for surface damage where landlord uses surplus water arising on a holding, and settle dispute as to whether there is a surplus (12, Act 1911).

18. Fix compensation to landlord for loss arising out of their determination forbidding letting of a vacant holding in certain circumstances (17, Act 1911).

19. On a holding which was constituted or enlarged otherwise than by agreement becoming vacant, fix compensation payable to landlord for damage or injury by the constitution or enlargement through (*a*) non-payment of rent; (*b*) depreciation in letting value of the land comprised in the holding, or (*c*) by the imposition of liabilities for compensation for permanent improvements. This, however, is subject

to landlord's right to have this matter dealt with by an arbiter instead of by the Land Court (7 and 17, Act 1911).

20. Decide whether written conditions signed by landholder for protection of interests of landlord or of neighbouring landholders is reasonable (1, Act 1886).
21. Settle summarily boundaries of holdings (21, Act 1886).
22. Make orders with reference to fencing of land given to landholders (21, Act 1886).
23. Regulate use of sea-weed, peat and thatching materials (12, Act 1886).
24. Allocate common pasturage among landholders (12, Act 1886).
25. Prescribe and enforce regulations for exercise of pasture and grazing rights held in common (24, Act 1911), and approve and supervise execution of regulations by committees of landholders regarding common grazings (Act 1891).
26. Prescribe procedure in connection with applications for registration in Landholders' Holding Book (15, Act 1911).
27. State case for opinion of Court of Session on questions of law (25 (2), Act 1911).
28. Make rules for conducting business of the Court (3 (12), Act 1911).
29. Prepare and issue forms of application and other forms of procedure (Sec. 29, Act 1886).
30. Determine all questions of expenses in proceedings before them (24, Act 1886, and 25 (4), Act 1911).
31. With approval of Treasury, fix a scale of costs and fees to be charged in carrying the Acts into execution, and the taxation of such costs and fees, and the persons by whom, and manner in which, such costs and fees are to be paid (29, Act 1886).
32. Use Sheriff Court buildings and services of Sheriff Court officials (26, Act 1886).
33. Submit estimates and keep accounts of receipts and

expenditure and submit accounts to audit (3 (11), Act 1911).

34. Prepare Annual Report to Secretary of Scotland (5 (18), Act 1886).

With Reference to Statutory Small Tenants.

35. Decide summarily any question whether a person is a statutory small tenant, and intimate their decision to the Board (32 (13) and 33 (3), Act 1911).
36. Decide whether landlord has failed to provide and maintain buildings, &c., and issue finding and declaration from date of which statutory small tenant becomes a landholder (32 (11), Act 1911).
37. Fix equitable rent payable by statutory small tenant (32 (7) (8), Act 1911).
38. Fix period for renewal of tenancy (*ibid.*).
39. Decide whether landlord has reasonable ground of objection to statutory small tenant (32 (4), Act 1911).
40. Appoint and pay arbiter under second Schedule Agricultural Holdings (Scotland) Act, 1908, to deal with compensation claims for improvements by statutory small tenants (32 (10), 1911).
41. Authorise landlord to resume holding or part for purposes stated (Section 32 (15), Act 1911). (See under "Statutory Small Tenants," p. 34.)

Its Procedure.

Sec. 3 (12), Act 1911. Sec. 29, Act 1886.

The Land Court's procedure is largely left to the Court themselves. They have very wide powers under Section 25 of the Act. They may make rules for procedure before themselves, and from time to time issue forms of application, &c. as they may think proper. Generally, the Court's procedure will doubtless follow the lines adopted by the Crofters Commission, who prepared and issued rules and forms and a scale of costs and fees. In view, however, of the more formal constitution of the Land Court, it is probable some effort will be made to bring their proceedings somewhat in conformity with those of the ordinary Courts of Law.

All applications to the Court must be addressed to it at the office of the Sheriff Clerk or Sheriff Clerk Depute of the County or District, by whom they are to be forwarded to the Court. Sec. 27, Act 1886.

When application is made to fix a fair rent intimation thereof must be made to the other party (landlord or tenant), and the Court must appoint a time and place for hearing the parties. Sec. 20, Act 1886.

A similar course, with variations, requires to be followed in connection with applications for enlargement of holdings. In both cases the Court are empowered to visit the holdings and to issue an order on the question at issue. Sec. 21, Act 1886.

Substantially the same procedure may be followed with reference to the enlargement of holdings as to the constitution of new holdings. With this view sub-sections 7, 9, 10, 11, 13, 16, 17 and 18 of Section 7 of the Act relative to the constitution of new holdings are to apply, with the necessary modifications, to applications for enlargement of holdings. Sec. 16 (1), Act 1911.

All the findings and orders of the Court must be in writing. Sec. 25 (1), Act 1911.

Evidence may be taken on oath on demand of either party (Section 24, Act 1886), or in the discretion of the Land Court (Section 25 (3), Act 1911).

The Court are authorised to summon witnesses to appear before them (Section 25 (5), 1911).

Orders of the Court, along with the applications on which they proceed, require to be recorded in the Landholders' Holdings Book kept by the Sheriff Clerks, to whom they must be transmitted for that purpose. Sec. 27, Act 1886.

The Sheriff Court Rooms are at the disposal of the Land Court, who are also entitled to have the services of the Sheriff Court officials. Sec. 26, Act 1886.

Appeal by Special Case on Questions of Law.

The Land Court cannot, of course, be a law unto themselves. Their decision must be in accordance with law, and in any case in which a party to a proceeding before them conceives that they have erroneously decided a question of law it is Sec. 25 (2) Act 1911.

competent for him to require the Land Court to state a special case to either Division of the Court of Session for their opinion, that Court's decision being final. The Land Court may also of their own initiative state a special case.

Appeal against Decision of Land Court on Compensation Claims.

Secs. 7 and 17, Act 1911.

While the Land Court has very extensive powers to deal with claims for compensation for damage and injury, to landlord and tenant respectively, arising from the compulsory constitution of new holdings or the compulsory enlargement of holdings, and from such holdings becoming vacant (secs. 7 and 17), it is competent, in any case where a sum exceeding £300 is claimed, for the claimant to have the claim dealt with by arbitration. In such case, the arbiter may be appointed by agreement between the party and the Board, and failing that, by the Lord Ordinary of the Court of Session on the Bills. In the event, however, of the arbiter not issuing his award within three months of the date of his appointment, the decision of the matter will revert to the Land Court.

IV.—The Scottish Board of Agriculture.

Its Constitution.

Sec. 4, Act 1911.

The Board consists of not more than three persons (including a Chairman), appointed by His Majesty on the recommendation of the Secretary for Scotland. One of the members may be designated the Commissioner for Small Holdings by the Secretary for Scotland.

The members are to hold office during His Majesty's pleasure.

The Secretary for Scotland has power to appoint a Secretary to the Board, and the Board may, subject to his approval, appoint such officers, clerks and other persons as the Treasury may sanction.

The members, officers and other persons appointed are to

receive such remuneration as the Treasury may sanction, and that remuneration and the expenses of the Board are to be paid not out of the Agriculture (Scotland) Fund, but out of monies provided by Parliament.

Its Powers and Duties.

Any act or thing done, or required to be done by the Board, may be done by any one or more members thereof as the Secretary for Scotland may from time to time direct. Sec. 4 (1), Act 1911.

In the discharge of their duties the Board are required to comply with such instructions or regulations as the Secretary for Scotland may from time to time issue.

The Board are charged with the chief duty of promoting the interests of agriculture (including horticulture), forestry, and other rural industries in Scotland.

They are also to exercise the powers and duties which are or may be conferred on or transferred to them by the Act.

They may undertake—

(1) The collection and preparation of statistics relating to agriculture, forestry, and other rural industries.

(2) Make or aid in making enquiries, experiments and research.

(3) Collect or aid in collecting such information relating thereto as they think advisable.

(4) Promote, aid and develop instruction in agriculture, forestry, and other rural industries.

(5) Take such steps as they think proper to promote and develop agricultural organisation and co-operation.

It will be noticed that nothing is said about publishing statistics, information, and the results of experiments and research. This, however, seems to be implied. Doubtless the Board will publish and circulate leaflets as the Board of Agriculture and Fisheries have been wont to do, and it is to be hoped they may also publish a journal. The journal as published by the Board of Agriculture and Fisheries has been predominantly "English," very few Scottish contributions finding a place therein. That journal, excellent in itself, is

scarcely on popular enough lines for the general run of Scottish agriculturists. If an inexpensive and popular journal were issued its circulation might be widespread. The Board should also organise some system under which their leaflets would not become so much waste paper, but would reach the hands of almost the whole agriculturists of the country.

Sec. 4, Act 1911.

The powers and duties of the Board of Agriculture and Fisheries exercisable in, or in relation to, Scotland under the the enactments specified in the first Schedule to the Act or under any local Act are transferred to the Scottish Board, or in the case of powers and duties of any officer to such member or officer of the Board as the Board shall nominate for the purpose. The following are probably the chief of these enactments from an agricultural point of view :—

The Agricultural Holdings (Scotland) Acts, 1908 and 1910.

The Fertilizers and Feeding Stuffs Act, 1906.

The Sale of Food and Drugs Acts, 1875 to 1907.

The Destructive Insects and Pests Acts, 1877 and 1907.

The Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

The Merchandize Marks (Prosecutions) Act, 1894.

The Development and Road Improvement Funds Acts, 1909 and 1910.

The Light Railways Act, 1896.

Sec. 4 (12), Act 1911.

His Majesty in council may, by order made after consultation with the Board of Agriculture and Fisheries and the Secretary for Scotland, and with the consent of the Treasury, transfer to the Board any powers and duties of the Board of Agriculture and Fisheries exercisable in or in relation to Scotland which are not transferred by the Act, and make any adjustment consequential on any such transfer, and provide for any matter necessary or proper for giving full effect thereto.

Sec. 4 (14) 1911.

The Act expressly provides that nothing in it shall transfer to the Board any powers or duties under the Survey Act, 1870, or any powers or duties exercisable under the Diseases

of Animals Act, 1894, or any enactment amending or extending the same.

Although the Board are not to have concern with the Diseases of Animals Acts, they can turn their attention to such matters as the improvement of the breeds of horses, cattle, sheep and pigs. With that view it is to be hoped they may obtain financial assistance from the Development Commissioners. If the Board will pay heed to the views and wishes of agriculturists on that matter they will lose no time in applying to the Commissioners for a substantial grant for heavy horses breeding. The Fund provided by the Commissioners for the improvement of light horses is of comparatively little value so far as agricultural Scotland is concerned.

Of course one of the important functions of the Board will be to encourage and assist farmers, especially the more backward of them, to increase the fertility and produce of the soil. If all the arable land in Scotland presently cultivated were under charge of that proportion of farmers who may be classed as the most advanced in scientific knowledge and practical experience, it may be assumed that it would yield better results than under existing conditions. Is it impossible to devise a scheme by which those farmers who do not at present get the most out of their land should have the benefit of the advice and assistance of those who do? The backward class do not come much in contact with the more advanced class. If the Board could arrange some system of advice and assistance to the backward by the advanced, great good might result. The advanced class could inspect particularly backward farms, confer with the tenants, advise new methods, suggest more suitable manures, feeding stuffs and seeds (on which there is presently great waste), advise on the treatment of pastures, and generally encourage thoroughness, cleanliness from weeds, economies, &c.

With a view to making an experiment on the lines of this suggestion possibly a grant might be obtained from the Development Commissioners.

The Board has a number of duties specifically assigned to Sec. 5, Act 1911.

it under the Act. It has charge of the Agriculture (Scotland) Fund, consisting of—

(*a*) The annual sum of fifteen thousand pounds available under sub-section 2 of Section 4 of the Agricultural Rates Congested Districts and Burgh Land Tax Relief (Scotland) Act, 1896, during the continuance of that Act, and

(*b*) Any sums not exceeding one hundred and eighty-five thousand pounds annually voted by Parliament for the said purposes of the Act.

The Board must apply that Fund—

(1.) For the purpose of facilitating the constitution of new landholders' holdings.

Sec. 6, Act 1911.

(2.) For the improvement and rebuilding of dwelling-houses or other buildings of landholders' holdings in terms of the Landholders Acts or the Congested Districts (Scotland) Act, 1897.

(3.) For the purpose of exercising the other powers and duties conferred on, or transferred to, them by the Act in accordance with schemes to be approved by the Secretary for Scotland.

The duties specifically assigned to the Board include the following:—

(1.) The provision to facilitate the constitution of new small holdings. (Section 7.)

(2.) To receive from the Small Holdings Commissioner reports from time to time as to the demand for small holdings, and as to what land is available to meet the demand without causing undue displacement of farm labour.

(3.) The Commissioner, if satisfied that there is a demand and that it can be satisfied, requires to negotiate with the landlord with a view to the registration by agreement of one or more new holders.

(4.) Receive report from the Commissioner that negotiations for constitution of small holdings by agreement have failed. After due notice and after hearing parties the Board may intimate that it is in the public interest that one or

more new holdings be constituted, and that they propose to apply to the Land Court for an Order or Orders to constitute one or more new holdings, in accordance with scheme. Before proceeding with this matter, the Act imposes on them the duty to ascertain what land has fallen, or is about to fall, out of lease where the present tenant is not an offerer, and to preferably select such land for the constitution of new holdings, otherwise than by agreement. Obviously when the Board receive a Report from the Small Holdings Commissioner, they will require to carefully consider its terms and the grounds of it, before proceeding with an application to the Land Court. If this were not intended, the application might as well have been directed to be made by the Commissioner to the Court.

After making such an application to the Land Court, the Board have nothing further to do with the matter till the Court issue their Order. Before that Order can be issued, the Land Court must give all parties "having a right or interest in the land an opportunity of being heard." There is no provision for hearing the Board, and that may be unnecessary seeing that the Land Court will have before them the Board's application, and probably also the report by the Small Holdings Commissioner.

(5.) The Land Court are to require the Board to pay compensation for damage or injury to the landlord or tenant whose land is taken, in consequence of, and directly attributable to, the constitution of new holdings. The claims must be dealt with by the Land Court, or in cases exceeding £300, in the option of the claimant, by an arbiter appointed on his application by the Lord Ordinary on the Bills. (Section 7.)

(6.) The Board may proceed to make the Order effective by entering on the land, carrying out works and otherwise as may be required (due compensation to such amount as may be agreed, or as, in case of dispute, may be fixed by the Land Court, being made for surface damage), and may negotiate with one or more duly qualified applicants with a view to their registration as new holders in respect of the land.

(7.) The applicants must satisfy the Board as to their ability to fulfil the obligations incumbent on them, and the Board are required to give reasonable consideration to objections stated by the landlord to any applicant, and, *ceteris paribus*, give a preference to applicants preferred by the landlord. This obviously implies that the Board must submit to the landlord the name and address and other particulars regarding any applicant, and the landlord or his factor would be entitled to interview and make enquiries regarding any applicant. It would probably be a good objection that an applicant refused to see or communicate with the landlord or his factor. After all, the tenant is not to be the tenant of the Land Court, but the tenant of the landlord, and, in this matter of selecting tenants, the Land Court are not likely to act so unreasonably as to allow applicants to treat the landlord as if he had no rights or interests in the matter.

(8.) Any member of the Board, or any person authorised in writing by them may, for the purposes of the Landholders Acts, enter upon and inspect any lands or buildings at all reasonable hours on any lawful day.

Sec. 7 (7), Act 1911.

(9.) With a view to, and as incidental to, the registration of a new holder or new holders in respect of any land, whether by agreement or otherwise, the Board may, on considering a report by the Commissioners for Small Holdings, provide assistance, by way of loan or gift, for

Dividing, fencing or otherwise preparing or adapting the land;

Making occupation roads;

Executing other works, such as drainage or water supply, or for any similar purpose, and they may provide assistance, by way of loan only, for the erection or adapting of a dwelling-house or other buildings.

Secs. 7 and 9, Act 1911.

(10.) The Board have very wide powers to grant loans for improvement or rebuilding of dwelling-houses or other buildings of landholders or cottars.

(11.) On the agreement for such a loan being recorded in the Landholders' Holdings Book, it has the effect of trans-

ferring to the Board the landholders' rights to compensation for permanent improvements (Section 8 (1)), but, in certain events, the landlord's right to arrears of rent takes precedence (Section 23).

(12.) In the event of the landholder committing a breach of the conditions of repayment of any loan from the Board, the Board may apply to the Land Court to have the landholder removed, and for the assignation of the holding to some one person. (Section 8 (2).)

(13.) The Board may apply to the Land Court to append to their Order fixing a fair rent, a record specifying the condition of cultivation of the holding and of the buildings, &c., and by whom such permanent improvements have been executed or paid for. (Section 8 (4).)

(14.) The consent of the Board, as well as of the landlord, is required before a new holder can erect more than one dwelling-house on his holding. (Section 10 (2).)

(15.) Applications for enlargement of holdings are to be sent to the Board. Such applications may now be made by a single landholder or two or more landholders. (Section 16 (1).)

(16.) On receiving such application setting forth that there is land available for enlargement of the holding which the applicant is willing to take on lease but which the landlord refuses to let on reasonable terms (that is to say, on such terms as are usually obtained in the letting of land of the like quality and similarly situated in the same district for other purposes than that of a deer forest, or of a grouse moor, or other sporting purpose (Section 11, Act 1886)), the Board may proceed in the same way as they are required to do in the case of the constitution of new holdings. If, on enquiry, the Commissioner cannot effect an arrangement by agreement, the Board may, after following the prescribed procedure, intimate to the landlord, and the other parties concerned, that it is in the public interest that the holding (or holdings) be enlarged, and that they propose to apply to the Land Court to make an Order for enlargement.

Sec. 16 (1), Act 1911.

Sec. 7 (11), Act 1911.

The Land Court then deal with the application in the

same way as they are required to deal with applications for the constitution of new holdings. (See under Enlargement of Holdings, p. 11.)

Sec. 16 and secs. 7 (11) and 17, Act 1911.

(17.) The Board may be called on to pay compensation for loss or injury resulting from the enlargement of a holding, the amount to be fixed by the Land Court, or subject, in cases where the amount in dispute exceeds £300, to the right of the claimant to have the matter dealt with by an arbiter, instead of by the Land Court.

(18.) The Board have the same powers with reference to enlargement of holdings as in the case of the constitution of new holdings, of entering on the lands, carrying out works thereon, and of granting loans and gifts, &c.

Sec. 16 (2), Act 1911.

It should be noted, however, that land is not to be deemed available for enlargement of holdings unless it is land which might have been used for constituting new holdings, and, if arable land, unless it lies contiguous or near to land already in the occupancy of the landholder making the application. Further, the holding cannot be enlarged beyond the extent or rental allowable in the case of a new holding.

Sec. 17, Act 1911.

(19.) Where a holding has, from any cause, ceased to be held by a landholder, the landlord requires to intimate the fact to the Board, who may apply to the Land Court to fix a period during which he shall not be allowed, without the Board's consent, to let the holding otherwise than to a neighbouring landholder for the enlargement of his holding or to a new holder. The Land Court are entitled to attach conditions to their determination, one condition being the payment by the Board of such sum as may be agreed on, or as the Land Court shall fix, for the loss arising from their determination.

(20.) Where, however, a holding which becomes vacant was, otherwise than by agreement, constituted a new holding or enlarged, the Board may be required to pay for damage or injury sustained by the landlord through non-payment of rent, or in respect of depreciation in the letting value of the land comprised in the holding, or by the imposition of liabilities for compensation for permanent improvements, the amount

to be assessed by the Land Court after hearing the Board, subject to right of claimant to have the matter dealt with by an arbiter as under (17) *supra*.

(21.) The Board may provide model forms of agreement for optional use by landlords and statutory small tenants. Sec. 32 (12), Act 1911.

(22.) The Board may apply to the Land Court to append to their Order fixing an equitable rent payable by a statutory small tenant, a record specifying the condition of the cultivation of the holding and of the buildings, &c. thereon, and by whom the permanent improvements have been executed or paid for. (Section 8 (4) and 32 (14).)

(23.) The Board are required to compile and, from time to time, to revise a register of small holdings (whether held by landholders or statutory small tenants or not) throughout Scotland, in such form and containing such particulars as the Secretary for Scotland shall prescribe. (Section 32 (1).)

Congested Districts (Scotland) Act.

From and after 1st April 1912, the date of commencement of the Act, the powers and duties of the Congested Districts (Scotland) Commissioners become vested in, transferred to and imposed on the Board (Section 28), and all property belonging to and vested in the Commissioners passes to and vests in the Board (Section 29). Sec. 28, Act 1911.

Under that Act, as amended, the Board, within the congested districts, may take such steps as they think fit for

(*a*) Aiding and developing agriculture, dairy farming and the breeding of live stock and poultry, in congested districts. Sec. 4, Act 1897.

(*b*) Providing suitable seed potatoes and seed oats and implements and dairy utensils and machinery or appliances for the making of butter or cheese, for landholders and cottars in congested districts.

(*c*) Providing, subject to certain provisions of the Act, land for sub-division among, or for enlargement of the holdings of, landholders and cottars in congested districts, for the purposes of cultivation or grazing, in such manner and upon such conditions and after such adaptations as shall be determined by the Land Court.

(*d*) Aiding migration of landholders and cottars, and settling any migrants under favourable circumstances in the places to which they first migrate.

(*e*) Aiding and developing fishing (including industries connected with and subservient to fishing), and the erection and formation of fishermen's dwellings and holdings in congested districts.

(*f*) Aiding, providing and improving of piers or boat-slips, public roads and bridges, and footpaths and foot bridges, and meal mills, in congested districts; and providing guarantees for telegraph extensions, or such other postal facilities (including money order and savings bank business) as may be within the power of the Postmaster-General to grant under guarantee.

(*g*) Aiding and developing spinning, weaving, and other home industries in congested districts; and

(*h*) Subject to the consent of the Treasury, aiding the providing or improving of harbours.

Sec. 4 (2), Act 1897.

(1.) The Board may give their assistance either by way of gift or loan, or sale at cost price, and subject to such conditions as they may think fit, but the consent of the Secretary for Scotland is required before any money gift is made.

(2.) Any person nominated by the Board may, after due notice to the occupier, enter any land occupied by an occupier to whom seed or implements, utensils, machinery or appliances have been sold or gifted, in order to ascertain whether such seed has been properly sown, and that proper use is being made of the implements, utensils, machinery, &c. (Section 4 (3), Act 1897.)

(3.) Any loan must be secured by a bond, which is to form a charge on the holding in favour of the Board, to be repaid as provided for. (Section 6, Act 1897.) It would appear, however, as if it were quite competent, even within congested districts, to give loans under Sections 7 and 9 and under the conditions of the Landholders Act, which conditions do not require that the loan be secured by a bond.

(4.) The Board have power to purchase land by agreement, and to adapt and dispose of the same for the purposes of the Congested Districts (Scotland) Act, 1897, Section 5.

(5.) The Board are required to cause to be prepared and registered all deeds, writs and instruments necessary for completing the title to land disposed of by them, and for recovering payment of any loan over land made by them under that Act, and they must include in the grant or loan the cost incurred or to be incurred in accordance with scales to be fixed by them. Sec. 7, Act 1897.

(6.) The Board, if they think fit, may appoint at their pleasure a person duly qualified to carry out the provisions of the preparation and recording of titles, &c., and assign to him such salary or remuneration as they may determine.

(7.) The Board are required once a year to make a report to the Secretary for Scotland on their proceedings under the Act of 1897, and such report is to be forthwith submitted to Parliament.

THE TEXT OF THE ACTS WITH NOTES.

The Small Landholders (Scotland) Act, 1911.

1 & 2 George 5, Cap. 49.

ARRANGEMENT OF SECTIONS.

Section

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6. Application of moneys.
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Section
20. Amendment of law as to bequest of holdings.
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22. Loss of rights by heir in certain cases.
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24. Amendment of law as to regulation of common grazings, &c.
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35. Voluntary agreements.
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37. Extent of Act.
38. Commencement of Act.
39. Repeal.

SCHEDULE.

An Act to encourage the formation of Small Agricultural Holdings in Scotland, and to amend the Law relating to the Tenure of such Holdings (including Crofters' Holdings); to establish a Board of Agriculture for Scotland; and for other purposes connected therewith.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Sec. 1.

Crofters Acts applied throughout Scotland.

1.—From and after the commencement of this Act,[1] and subject to the provisions thereof, the Crofters Acts[2] shall be read and construed as if the expression "landholder"[3] were substituted for the expression "crofter" occurring therein, and shall have effect throughout Scotland.[4]

1. 1st April 1912 (Sec. 37).
2. See definition Sec. 31.
3. See definition Sec. 2 (2).
4. The general effect of this, besides changing the name crofter to landholder, is to apply the provisions of the Crofters Acts, as amended by this Act, to

   (*a*) the present crofters in crofting parishes.
   (*b*) Leaseholders, (from termination of lease).
   (*c*) Tenants from year to year, from commencement of Act.
   (*d*) New holders, from date of registration.

   As to conditions regarding cultivation by and residence of landholders, see Secs. 2 and 10 (1), *infra*.

   In all cases the rent must not exceed £50 (£30 in Lewis) unless the land (exclusive of common pasture or grazing land) does not exceed 50 (30 in Lewis) acres (Sec. 26 (3)).

   (*b*) and (*c*) may be statutory small tenants (Sec. 2 (iii.) (*a*), and Sec. 32), but a statutory small tenant may be registered as a landholder in certain events (Sec. 32 (ii.)).

   See Introduction, p. 3.

Sec. 2.

Who to be landholders.

2.[1]—(1) In the Crofters Acts[2] and this Act (hereinafter referred to collectively as the Landholders Acts) the word "holding"[3] means and includes—

(i.) As from the commencement of this Act,[4] every holding[3] which at the commencement of this Act[4] is held by a crofter[5] to whom in respect of such holding the Act of 1886 applies (hereinafter referred to as an existing crofter);[6]

(ii.) As from the commencement of this Act,[4] and subject as hereinafter provided, every holding[3] which at the commencement of this Act is held by a tenant from year to year who resides on or within two miles from[7] the holding, and by himself[8] or his family cultivates the holding with or without hired labour (hereinafter referred to as an existing yearly tenant);[9]

(iii.) As from the termination[10] of the lease, and subject as hereinafter provided, every holding[3] which at the commencement of this Act[4] is held under a lease[11] for a term longer than one year by a tenant who resides on or within two miles from[7] the holding, and by himself[8] or his family cultivates the holding with or without hired labour (such tenant, or his heir or successor, as the case may be, holding under the lease at the termination thereof[10] being hereinafter referred to as a qualified leaseholder):[9]

Provided that such tenant from year to year or leaseholder—

(*a*) shall (unless disqualified under section twenty-six of this Act) be held an existing yearly tenant or a qualified leaseholder within the meaning of this section in every case where it is agreed between the landlord and tenant or leaseholder, or in the event of dispute proved to the satisfaction of the Land Court, that such tenant or leaseholder or his predecessor in the same family[12] has provided or paid for the whole or the greater part of the buildings or other permanent improvements[13] on the holding[14] without receiving from the landlord or any predecessor in title payment or fair consideration therefor;[15] and

(*b*) in every other case shall not be held an existing yearly tenant or a qualified leaseholder within the meaning of this section, but shall (unless disqualified under section twenty-six of this Act) in respect of the holding be subject to the provisions of this Act regarding statutory small tenants;[16]

(iv.) As from the date of registration,[17] every holding which is constituted by the registration of an applicant in respect thereof on his application under the provisions of this Act respecting the constitution of new holdings (herein-after referred to as a new holder).[18]

(2) In the Landholders Acts[19] the word "landholder"[20] means and includes, as from the respective dates above mentioned, every existing crofter, every existing yearly tenant, every qualified leaseholder, and every new holder, and the successors of every such person in the holding being his heirs or legatees.[21]

1. Sec. 26 (8) extends this section to joint tenants being existing crofters, existing yearly tenants, or qualified leaseholders under certain restrictions.
2. See definition (Sec. 31).
3. See Sec. 26 and Introduction, p. 4.
4. 1st April 1912 (Sec. 38). It is important to note that the Act will not apply to small holdings created by agreement after the commencement of the Act, except where landlord agrees that the tenant may apply for registration (Sec. 7 (1)).
5. See Sec. 34, Act 1886, and notes.
6. See Sec. 26 (9).
7. Under the Act of 1886 (Sec. 34) the crofter required to reside *on* his holding; and this provision was held to be broken where a crofter lived at a distance from his holding, which he merely visited occasionally for a week or a fortnight at a time to do necessary farm work, the house being at other times unoccupied (*Livingstone* v. *Beattie*, 18th March, 1891, 18 R. 735). Where the landholder resides off his holding, the two miles referred to in this section will be measured from the dwelling to the nearest point of the holding. The Crofter Commission have held, in a number of cases, that "personal continuous occupation is not required" (see their Report, December 1907 to December 1908, p. xviii., p. xiv.). Occupation might be by family and servants.
8. While he is not required personally to cultivate the holding, but may do so by members of his family, he may be allowed to assign his holding on the ground that he is unable to work it through illness, old age, or infirmity (Sec. 21). The Land Court have a discretion

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in the matter, and will doubtless take into consideration the ability of the family to cultivate the holding. It is to be noted, however, that the section implies that the landholder must be able to manage operations. He is to cultivate by himself or by his family, &c. He is to direct and be responsible.

9. See Sec. 26 (2) (3), and Introduction, p. 3.

10. *I.e.* the expiration of the lease through the running out of the stipulated term of endurance, or through the parties, or either of them, exercising their right to take advantage of a break stipulated for in the lease, &c. (Sec. 31). Section 18 of the Agricultural Holdings (Scotland) Act, 1908, which allows renewal of leases by tacit relocation, in the absence of the notice therein prescribed, does not apply here.

11. For the definition of lease, see Sec. 35 Agricultural Holdings (Scotland) Act, 1908 (see also Sec. 34, Act 1886, and Appendix).

12. The expression "his predecessor in the same family" is the same as that used in Secs. 6 (1) and 8 (b), Act 1886. In the usual case "predecessor in the same family" would probably be confined to ordinary legal succession, but the Landholders Acts seem to justify a wider view. "Family," for example, comprehends "wife, or any person who, failing nearer heirs, would succeed to the crofter in case of intestacy" (Sec. 16, Act 1886). It may be argued, therefore, that the improvements here referred to include those which were effected or paid for by the tenant or leaseholder, or by his predecessor, including his wife or any person to whom he was entitled to succeed in case of intestacy. It should be observed, however, that predecessor (singular) is used here, while "predecessors" (plural) is used in Sec. 8 (b), Act 1886. The singular is also used in Sec. 32 (8), *infra*, but there it is "*any* predecessor in title" (see note 14 below).

13. See Schedule to Act of 1886.

14. This only applies to the buildings and improvements actually on the holding at the time the question is raised. It would not be allowable to refer to improvements which had exhausted themselves. This provision applies generally to all tenants, within the limits imposed by the Act, for a year and more, who were not crofters under the Act of 1886. It may, therefore, along with the succeeding subsection, exclude from the category of landholder many yearly tenants and leaseholders, even in the highlands, but especially in the lowlands, those who are excluded being named statutory small tenants (Sec. 32, *infra*).

15. Fair consideration might mean the giving of additional land at a low rent, wiping out arrears of rent, providing manures, or making other substantial concessions for the tenant's benefit.

16. Sec. 32.

17. Secs. 7 ; 15 ; 26 (2), (4), (5) and (8).

18. Sec. 7.

19. Sub-sec. (1) above.

20. Sec. 1.

21. Sec. 26. See note 4 above.

Sec. 3. Constitution of Scottish Land Court.

3.[1]—(1) It shall be lawful for His Majesty, on the recommendation of the Secretary for Scotland, as from the commencement of this Act,[2] and from time to time as vacancies occur, to appoint not more than five persons, to be designated the Scottish Land Court (in this Act referred to as the Land Court), and to appoint one of such persons to be Chairman of the Court.

(2) The Chairman shall be a person who at the date of his appointment shall be an advocate of the Scottish bar of not less than ten years' standing, and shall forthwith on his appointment have the same rank and tenure of office as if he had been appointed a judge of the Court of Session.

(3) One of the said persons shall be a person who can speak the Gaelic language.

(4) It shall be lawful for the Secretary for Scotland to remove any member of the Land Court (other than the Chairman) for inability or misbehaviour. Every order of removal shall state the reasons for which it is made, and no such order shall come into operation until it has lain before both Houses of Parliament for not less than thirty days while Parliament is sitting, nor if either House passes a resolution objecting to it.

(5) If and when the Chairman is temporarily unable to attend, or his office is vacant, the Secretary for Scotland may appoint to act temporarily in his place any person having the qualification required for holding the office of Chairman, and the person so appointed shall during such inability or vacancy have the same powers and perform the same duties as if he were the Chairman.

(6) The Secretary for Scotland shall from time to time appoint a fit person to act as principal clerk to the Land Court.

(7) The Land Court may appoint or employ such assessors, surveyors, law agents, valuers, clerks, messengers, and other persons required for the due performance of their duties, as the Treasury, on the recommendation of the Secretary for Scotland, may sanction.

(8) Any Crofters Commissioner or officer of the Crofters Commission in office at the commencement of this Act,[2] who may not be appointed a member or an officer of the Land Court, shall receive such compensation as the Treasury may determine.

(9) There shall be paid to the Chairman of the Land Court a salary not exceeding two thousand pounds a year, and to each of the other members a salary not exceeding twelve hundred

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pounds a year, and such salaries shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof. The Chairman shall have the same right to a retiring annuity proportionate to his salary, subject to the like conditions and incidents as if he had been appointed a judge of the Court of Session, and every such annuity shall be charged and paid as aforesaid.[3]

(10) There shall be paid to each of the other persons appointed or employed under this section such salary or remuneration as the Treasury may sanction; and all such salaries and remuneration and the expenses of the Land Court incurred in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(11) The Land Court shall submit such estimates and keep such accounts of their receipts and expenditure, and their accounts shall be audited in accordance with such regulations, as the Treasury may direct.[4]

(12) It shall be lawful for the Land Court from time to time to make rules for conducting the business of the Court.

1. See Introduction, p. 37, Secs. 25 and 28, *infra*, and Act 1886. The constitution of the Land Court is largely based on that of the Crofter Commission (Sec. 17, Act 1886), but its importance and powers are greatly increased.
2. 1st April 1912.
3. Apparently these salaries and retiring annuity are not to come out of the Agriculture (Scotland) Fund constituted under Section 5. The Secretary for Scotland stated in the course of the discussion on the Bill in the House of Lords that the expenses of administration of the Court would be paid by monies provided by Parliament apart from the Agriculture (Scotland) Fund.
4. The Land Court are required to send in an annual report to the Secretary for Scotland (Sec. 18, Act 1886).

Constitution of Board of Agriculture for Scotland.

4.[1]—(1) It shall be lawful for His Majesty on the recommendation of the Secretary for Scotland, as from the commencement of this Act,[2] and from time to time as vacancies occur, to appoint not more than three persons to be designated the Board of Agriculture for Scotland (in this Act referred to as the Board) and to appoint one of such persons to be Chairman of the Board. Any act or thing required or authorised to be done by the Board may be done by any one or more of the members thereof as the Secretary for Scotland may from time to time direct.[3] Provided that all deeds,

writs and documents to be signed or executed by or on behalf of the Board, may be signed or executed by any one of the members thereof and the Secretary to the Board. The Board may sue or be sued under the designation aforesaid, and service on them of all legal processes shall be effected by service on their Secretary.

(2) The Board shall be charged with the general duty of promoting the interests of agriculture, forestry, and other rural industries in Scotland, and shall also exercise and perform any powers and duties which are or may be conferred on or transferred [4] to them under the provisions of this Act. In the discharge of their duties they shall comply with such instructions or regulations as may from time to time be issued by the Secretary for Scotland, and they shall submit an annual report of their proceedings to him, which report shall be laid before both Houses of Parliament.[5]

(3) The Board may undertake the collection and preparation of statistics [6] relating to agriculture, forestry, and other rural industries, and may make or aid in making such inquiries, experiments, and research, and collect or aid in collecting such information relating thereto as they think advisable.

(4) It shall be the duty of the Board to promote, aid, and develop instruction in agriculture, forestry, and other rural industries.[7]

(5) The Board shall take such steps as they think proper for the promotion and development of agricultural organisation and co-operation.

(6) Without prejudice to the provisions of the immediately preceding sub-sections such one of the members of the Board as the Secretary for Scotland shall from time to time appoint shall be designated the Commissioner for Small Holdings, and shall be specially charged with the duties hereinafter committed to him.[8]

(7) The Secretary for Scotland shall from time to time appoint a fit person to act as secretary to the Board.

(8) The members of the Board shall hold office during His Majesty's pleasure. The Board may, subject to the approval of the Secretary for Scotland, appoint or employ such officers, clerks, and other persons as the Treasury may sanction.

(9) The members of the Board, and other persons appointed or employed under this section, shall respectively receive such salary or remuneration as the Treasury may sanction, and all such salaries

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or remuneration and the expenses of the Board incurred in the execution of their duties, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament.

(10) The Board shall submit such estimates and keep such accounts of their receipts and expenditure, and their accounts shall be audited in accordance with such regulations as the Treasury may direct.[9]

(11) The powers and duties of the Board of Agriculture and Fisheries exerciseable in or in relation to Scotland under the enactments specified in the First Schedule to this Act or under any local Act, shall be transferred to the Board, or in the case of the powers and duties of any officer, to such member or officer of the Board as the Board nominate for the purpose.[10]

(12) Subject as hereinafter provided, it shall be lawful for His Majesty in Council by Order, made after consultation with the Board of Agriculture and Fisheries and the Secretary for Scotland and with the consent of the Treasury, to transfer to the Board any powers and duties of the Board of Agriculture and Fisheries exerciseable in or in relation to Scotland which are not transferred by this Act, and to make any adjustment consequential on any transfer by or under this section, and to provide for any matter necessary or proper for giving full effect to any such transfer.

(13) Before any such order is made, the draft thereof shall be laid before each House of Parliament for not less than two months while Parliament is sitting, and if either House, before the expiration of such period of two months, presents an address to His Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order.

(14) Nothing in this section shall transfer or authorise the transfer of any powers or duties under the Survey Act, 1870, or any powers or duties exerciseable under the Diseases of Animals Act, 1894, or any enactment amending or extending the same.

1. See Introduction, p. 44, and Sec. 28, *infra*.
2. 1st April 1912.
3. For example, one member might apply himself to Forestry or Agricultural Research. It will be observed that the Land Court may delegate their powers to one member but subject to conditions (Sec. 25 (5)).

4. Sub-secs. (12 and (14), *supra*, and Sec. 28, *infra*.

5. See Sec. 3, note 4, *supra*.

6. Presumably it is intended that the Board shall do as regards Scotland the same work regarding statistics as has hitherto been done by the Board of Agriculture and Fisheries. (See Introduction, p. 45.)

7. It may be intended that the Board shall take over the Education Department's work regarding the Agricultural Colleges, although it does not follow that that will be done.

8. Sec. 7, *infra*.

9. This corresponds to sub-sec. 11 of Sec. 3.

10. See Introduction p. 46, and sub-secs. 12, 13, and 14, *supra*.

Moneys placed at disposal of Board of Agriculture. 59 & 60 Vict. c. 37.

5.—The following moneys shall be placed at the disposal of the Board for the purposes hereinafter specified :[1]

(*a*) The annual sum of fifteen thousand pounds available under sub-section two of Section 4 of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896,[2] during the continuance of that Act; and

(*b*) Any sums not exceeding one hundred and eighty-five thousand pounds annually voted by Parliament for the said purposes.

The said moneys shall in the financial year commencing on the first day of April, nineteen hundred and twelve, and in any subsequent financial year, be paid into one fund hereby constituted under the name of the Agriculture (Scotland) Fund.

Any sum standing to the credit of the Congested Districts (Scotland) Fund at the commencement of this Act, and any sums required by the provisions of any Act to be carried to the Congested Districts (Scotland) Fund, shall at and after the commencement of this Act be carried to the Agriculture (Scotland) Fund.

1. Sec. 6.

2. Sec. 3, Act 1897.

Application of moneys.

6.—The Agriculture (Scotland) Fund[1] shall be applied for the following purposes, that is to say, for the purpose of facilitating the constitution of new landholders' holdings,[2] the enlargement of landholders' holdings,[3] and the improvement and rebuilding of dwelling-houses or other buildings[4] of landholders' and cottars in terms of the Landholders Acts or the Congested Districts (Scotland) Act, 1897, and for the purpose of exercising the other powers and duties conferred on or transferred[5] to the Board under the

Sec. 6.

provisions of this Act, in accordance with schemes to be approved by the Secretary for Scotland.[6]

1. Sec. 5.
2. Sec. 7.
3. Secs. 11 and 21, Act 1886; and Sec. 16, *infra*.
4. Sec. 7 (7), *infra*, and notes thereto, and Sec. 9.
5. Sec. 4 and Sec. 28.
6. It seems unfortunate that there has been no division of the funds with reference to the different purposes. It is probable, however, that the accounts will be so kept as to show the sum spent on small holdings, and, separately, the sum spent on the other purposes of the Acts.

Powers to facilitate the constitution of new holdings.

7.—(1) It shall be lawful for the landlord of any land and any other person, to agree that, in respect of such land, such person may apply to the Land Court to be registered[1] as a new holder[2] under this Act, and such person may thereupon apply accordingly, and subject to the provisions of this Act may be so registered.[1]

(2) It shall be the duty of the Commissioner for Small Holdings[3] to report from time to time to the Board after due inquiry what demand for small holdings exists in any district, and after consultation (where practicable) with the landlord or landlords what land (if any) is available to meet that demand, without causing undue displacement of farm servants presently employed on or about such land, under what conditions such land is cultivated, and what employment it affords.[4]

(3) Where the Commissioner for Small Holdings[3] is satisfied that there is a demand for small holdings and that suitable land exists, it shall be his duty to negotiate with the landlords of such land with a view to the adjustment of a scheme for the registration by agreement of any one or more new holders[2] in respect of such land.

(4) Failing agreement, such land may, otherwise than by agreement, be made available for the registration[1] of new holders in the manner and subject to the conditions hereinafter prescribed.[5]

(5) In proceeding under this section the Board[6] shall take steps to ascertain what land is falling, or is about to fall out of lease where the present tenant is not an offerer, and shall preferably select such land (if otherwise suitable) for the constitution of new holdings otherwise than by agreement.

(6) Where a new holder is registered[1] under this section by agreement, the rent agreed between the landlord and the new

holder shall not, if the same shall have been agreed upon for a specified period[7] be altered by the Land Court during such period, and shall not in any case be altered by the Land Court for a period of seven years from the term at which it first becomes payable.[7]

(7) Where, with a view to, or as incidental to, the registration[1] of a new holder or holders[2] in respect of any land, whether by agreement or otherwise, the Board are of opinion, upon consideration of a report by the Commissioner for Small Holdings,[3] that assistance should be provided for the purpose of dividing, fencing, or otherwise preparing or adapting the land, making occupation roads, or executing other works, such as works for the provision of drainage or water supply,[8] or erecting or adapting a dwelling-house or dwelling-houses or other buildings,[9] or for any similar purpose, the Board may provide such assistance by way of loan,[10] or (except as regards dwelling-houses or other buildings) by way of gift, and subject to such conditions as they may prescribe. Conditions so prescribed and the provisions for their enforcement or for the case of their violation shall be as effectual as if they were contained in this Act.[11]

(8) Where the Board are of opinion that damage or injury will be done to any tenant in respect that the land forms part or the whole of his tenancy, they shall pay compensation as may be agreed between the Board and such tenant.[12]

(9) Where the Commissioner for Small Holdings[3] reports[13] that the landlord refuses to negotiate, or where, after submitting to the landlord a scheme for the constitution of one or more new holdings on the land, he reports that no agreement can be reached, it shall be lawful for the Board, after due notice[14] and after hearing any party who desires to be heard,[15] to intimate to the landlord and to other parties concerned that it is in the public interest that one or more new holdings should be constituted on the land in accordance with the said scheme,[16] and that they propose to apply to the Land Court to make an order or orders for the constitution of one or more new holdings on the land in accordance with such scheme, to be occupied by new holders at a fair rent,[17] and upon such terms and conditions not inconsistent with the Landholders Acts as the Land Court consider just; and thereafter to apply[18] accordingly.

(10) Before making such an order the Land Court shall give all parties having a right or interest in the land an opportunity of being heard.[19]

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(11) The Land Court shall thereafter determine, with due regard to the provisions of the Landholders Acts, and by order or orders [20] declare—

(*a*) In respect of what land, if any, specified in the scheme, one or more holdings for new holders [2] may respectively be constituted, and up to what date the power to constitute them otherwise than by agreement may be exercised; [21]

(*b*) What is the fair rent [17] for each new holding;

(*c*) What land, if any, specified in the scheme is to be excluded therefrom; and

(*d*) Whatever else may be necessary for the purpose of making the scheme effective, and of adjusting the rights of all parties interested in or affected by the proceedings.[22]

Provided that where the Land Court are of opinion [23] that damage or injury will be done to the letting value of the land to be occupied by a new holder or new holders,[24] or of any farm of which such land forms part,[25] or to any tenant in respect that the land forms part or the whole of his tenancy,[26] or to any landlord either in respect of an obligation to take over sheep stock at a valuation, or in respect of any depreciation in the value of the estate of which the land forms part,[27] in consequence of and directly attributable to the constitution of the new holding or holdings as proposed, they shall require the Board, in the event of the scheme being proceeded with,[28] to pay compensation to such amount as the Land Court determine after giving parties an opportunity of being heard and, if they so desire, of leading evidence in the matter.[29] Provided always that where within twenty-one days after the receipt from the Land Court of an order under this sub-section a landlord or a tenant, as the case may be, intimates to the Land Court and to the Board that he claims compensation to an amount exceeding three hundred pounds, and that he desires to have the question whether damage or injury entitling him to compensation as aforesaid will be done, together with the amount of such compensation (if any) to be settled by arbitration instead of by the Land Court, the same shall be settled accordingly, and at any time within fourteen days after the said intimation, failing agreement with the Board as to the appointment of an arbiter, it shall be lawful for him to apply to the Lord Ordinary on the bills for such appointment, and the Lord Ordinary

shall forthwith on receipt of such application nominate a single arbiter to decide the questions aforesaid,[30] whose award shall be final and binding on the Board in the event of the scheme being proceeded with, and if no final award be given within three months from the date when the arbiter is nominated, the questions aforesaid shall be decided by the Land Court as hereinbefore provided, provided that the Arbitration (Scotland) Act, 1894, shall not apply, and the second Schedule of the Agricultural Holdings (Scotland) Act, 1908, shall apply to any such arbitration, with the exception of paragraphs 1, 5, 10, 11, and 16 thereof, and with the substitution of the Lord Ordinary for the Sheriff, and the Auditor of the Court of Session for the Auditor of the Sheriff Court, and provided further that in the event of the scheme not being proceeded with the expenses of parties reasonably incurred in connection with the arbitration as the same may be allowed by the Auditor of the Court of Session shall be paid by the Board. In determining the amount of compensation under any provision of this Act no additional allowance shall be made on account of the constitution or enlargement of any holding being compulsory.

(12) In or after making such an order the Land Court (without prejudice to their other powers), may do, provide, or decide anything incidental to or consequential on such an order as if it were an order under section twelve of the Act of 1886, and may, if they think fit, provide for the incorporation with the order, subject to the necessary adaptations, of any provisions of the Lands Clauses Acts which appear to them requisite for carrying the order into effect.

(13) Upon such an order providing for the constitution of one or more new holdings on any land being issued the Board may proceed to make it effective by entering on the land, carrying out works, and otherwise as may be required (due compensation to such amount as may be agreed or as, in case of dispute, may be determined by the Land Court being made for surface damage), and may negotiate with one or more duly qualified applicants[31] with a view to their registration as new holders in respect of the land.

(14) A new holder shall not be duly qualified for registration[32] otherwise than by agreement who does not satisfy the Board as to his ability to fulfil the obligations incumbent on him.[33]

(15) The Board shall give reasonable consideration to objections[34]

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stated by a landlord to any applicant for a new holding, and *ceteris paribus* shall give a preference to applicants preferred by the landlord.

(16) Except by agreement a new holder shall not be registered—

(*a*) in respect of any land being or forming part of a farm not exceeding one hundred and fifty acres occupied by a person who has no personal interest in any other farm, or in case of a farm so occupied which exceeds one hundred and fifty acres but is wholly or mainly pastoral, not exceeding an annual value as entered in the Valuation Roll of eighty pounds.[35] Provided that nothing herein contained shall operate to prevent the registration otherwise than by agreement of two or more new holders in respect of the whole of such farm, not being a farm wholly or mainly pastoral where no other land is available[36] in the neighbourhood of any existing village or township; or

(*b*) in respect of any land being or forming part of a farm occupied subject to a lease which was in force at Whitsunday nineteen hundred and eleven, or in the case of land within the Counties specified in Section 19 of the Act of 1886 at Whitsunday nineteen hundred and six, so long as the lease remains in force.[37]

(17) All parties being possessed of lands or any right or interest therein who under the Lands Clauses Acts have power on behalf of themselves or of others to convey and dispose of such lands, or of such rights therein for the purposes mentioned in those Acts, shall have the like power to enter into any agreement or give any consent for the purposes of this section.

60 & 61 Vict. c. 53.

(18) Notwithstanding anything contained in the Congested Districts (Scotland) Act, 1897, the expression "landlord" in this section includes the Board in respect of any land purchased under that Act and transferred to the Board under the provisions of this Act.[38]

(19) Any member of the Land Court, or the Board, or any person authorised in writing by the Land Court or by the Board, may for the purposes of the Landholders Acts enter upon and inspect any lands or buildings at all reasonable hours on any lawful day after due notice has been given to the owner and occupier of such lands and buildings.

See Introduction, p. 7. It is thought that a principal tenant cannot for the purposes of this section stand as "landlord" in relation to his

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sub-tenant, although sub-section 6 of Section 26 does not refer to new holdings. The definition of landlord in Section 35 of the Agricultural Holdings (Scotland) Act, 1908, does not exclude sub-tenants, but the whole spirit, and many of the provisions, of the Landholders Acts are repugnant to their inclusion, and the Court of Session has decided that a sub-tenant is not a crofter (*Livingstone* v. *Beattie*, 1891, 18 R. 735; *Dalgleish* v. *Livingston*, 1895, 22 R. 646).

1. Sec. 15, *infra*, and Sec. 27, Act 1886.
2. Sec. 2 (iv.), *supra*.
3. Sec. 4 (6).
4. This provision regarding undue displacement of farm servants was intended as a check on taking land which is in a high state of cultivation and consequently affords employment to many servants. The report must show that the land is "available" within the meaning and intention of the Acts.
5. Sub-secs. 9, &c. below.
6. It will be noticed that this duty is not placed on the Commissioner for small holdings, as it is thought it should have been. The general idea is to throw on him the duty to make all preliminary enquiries with a view to a possible agreement with the landlord, and failing agreement, to his sending a report to the Board. Doubtless, however, the Secretary for Scotland will devolve this duty of the Board on the Commissioner under the power conferred by Sec. 4 (1). The Commissioner may have assistance provided to him.
7. No matter how long the period may be, the Land Court cannot interfere. What is to happen where the period is less than seven years? Apparently, in respect of registration, the landholder is to have fixity of tenure, from the date of registration, but if he and the landlord cannot agree on a rent for the period between the lapse of the agreement and the seventh year what is to happen? Is the landholder to be allowed to sit on rent free? Again, should the parties enter into a fresh agreement to last beyond the seventh year, could the Land Court step in to fix a fair rent before the expiry of that agreement? Section 5, Act 1886, would almost suggest the contrary. (See notes to that section.) The provisions for fixing fair rent are contained in Section 6, Act 1886.
8. Sec. 5 (3) (4), Act 1897.
9. Sec. 9, *infra*.
10. Secs. 8 and 9, *infra*, and Sec. 6, Act 1897. No money gift can be given under the Congested Districts Act without the Secretary for Scotland's consent.
11. Many of the provisions of this sub-section are similar to those of Secs. 4 (2), and 5 (3) (4), of Act 1897. (See also notes to Section 1, Act 1896.)
12. It is remarkable that this provision does not also apply to the landlord. The omission is not however important, because it is improbable that many new holdings will be constituted by agreement. If the Land Court are able and willing to give the landlord and tenant

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concerned the same rights to compensation, &c. as if the new holdings had not been constituted by agreement, there may be a prospect of voluntary arrangements being effected.

13. to the Board.

14. How this notice is to be given is not stated. Is it to be by advertisement? Probably so, but doubtless also to the landlord, tenant and bondholders (see Sec. 21, Act 1886). It is thought that in giving notice to the landlord, he might be asked to give the names and addresses of any other persons interested so that formal notice might also be sent to them. The notice ought to contain a copy of the proposed scheme. This is the more important in view of the further direction to intimate the Board's decision and intention to apply to the Land Court.

15. The Board are not apparently required to hear evidence, though they may do so, if they deem it expedient (Sec. 25).

16. It is thought the Board cannot alter the scheme; they might no doubt remit back to the Commissioner for alteration, but if it were altered materially the procedure regarding notice, &c. would have to be repeated.

17. Sec. 6, Act 1886. Sec. 13, *infra*. Note 7 (above).

18. This application must apparently be recorded if an order is made in response (Sec. 6, Act 1886, and Sec. 15, *infra*).

19. Although this does not require the Court to hear evidence, they have the power to do so under Sec. 25 (3), *infra*, which expressly refers to this section.

20. These orders, and the application from the Board on which they followed, require to be recorded. Note 18 (above).

21. The Court, if they issue an order, have no option but to fix a date on the lapse of which the power would expire, but there does not appear to be anything to prevent the same land being taken up under a fresh scheme, of course after going over the procedure again.

22. This enables the Court to adjust matters between the landlord, the tenant whose land is taken, and the small landholder who gets the land. Some of these matters are suggested by Section 21, Act 1886, which also suggests that adjustments might be necessary with bondholders. An important duty here will be to fix the abatement of rent to be given to the tenant whose land is taken (see Sec. 14, Act 1886). It is thought that the Land Court have power to do this under this sub-section. The abatement may be greater or less than the rent to be charged to the new holders. In Vatersay it has been found that the rents obtainable from new small holders only slightly exceeded half the amount of rent obtained before the Island was converted into small holdings. In any case in which the "eye" of a farm is taken away, the reduction will be much greater than the mere rent of the land taken. There will sometimes be the consideration that the buildings will be too large for the reduced size of the farm.

23. It is a pity these words "are of opinion" were not struck out as

proposed in Committee. It is doubtful, however, if they will have much practical effect.

24. It is damage or injury . . . in consequence of and directly attributable to the constitution of the new holdings or enlargement of existing holdings (Sec. 16 (1)). This is clearly very wide, and will include claims numerous and extensive. In the case of damage or injury to the letting value of the land to be occupied by new holders, it is improbable, generally speaking, that much compensation will be due. It has frequently been complained that small holdings are rented at a higher rate per acre than adjacent large farms. In many cases, however, this is necessary in view of the capital expenditure on the buildings on the small holdings, that expenditure being large in proportion to the extent and annual value of the land. We have seen a statement of a large number of small holdings in Forfarshire which showed that the rents only yielded 5 per cent. on the landlord's capital expenditure, leaving practically nothing for the land.

25. In the case of damage or injury to the letting value of the farm from which the land has been taken, many elements may have to be considered, such as the condition of the farm as regards cultivation and rotation, the value of the grass on the land taken, the excessive size of the buildings, the state of the fences, drains, &c. Doubtless the Court will add to the adjusted rent of the reduced farm, the rent to be paid by the new holder, and by comparing the result with the rent previously paid for the farm as a whole, they will form an approximate idea of the damage or injury to the letting value. However compensation is to be fixed it should have a steadying effect on the Court's action in subsequently reducing the small holders' rent to any appreciable extent, unless some rather extraordinary agricultural change shall have intervened. (See note 22, *supra*.)

26. In the case of damage or injury to any tenant in respect that the land forms part or the whole of his tenancy, there will be room for the greatest variety of claims and adjustments. The tenant will be entitled to every penny of loss he sustained directly through the taking of the land. In the ordinary case of an away-going he would be entitled to claim away-going tenant's rights, including compensation for improvements under the Agricultural Holdings (Scotland) Act, 1908. Any loss he sustains in connection with these rights must be made good under this section. So also must all loss resulting from the compulsory reduction of stock, implements, &c. This will be very much in accordance with the provisions of the Agricultural Holdings (Scotland) Act, 1908, for giving compensation for unreasonable disturbance. Under the Small Holdings Act, 1910 (applicable to England only), the County Council must pay compensation "for unreasonable disturbance where land is taken to form small holdings," the compensation being for "the loss or expense directly attributable to the quitting (of the land taken) which the tenant may incur upon or in connection with the sale or removal of his household goods or his implements of husbandry, produce or farm stock on or used in connection with the land." The Board of Agriculture and Fisheries are required to recoup the Council for the

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sum paid as compensation, together with reasonable expenses. Although that Act does not apply to Scotland, it is thought that the provisions of this section are wide enough to cover all claims which could have been made under such an Act if it had so applied. Indeed they are so wide and general that, as already indicated, they may extend to cover all claims of every sort for damage or injury through the taking of the land.

In some cases then, it may be found that the claims will include compensation for—

1. Such improvements as are specified in the Schedules to the Agricultural Holdings (Scotland) Act, 1908.
2. Labour on and dung in the land taken.
3. Loss through dislocating the system of cropping and cultivation.
4. Loss through forced partial displenishing—sale or removal of farm produce, stock, implements, &c. (similar to compensation for disturbance).
5. Loss of profits on the land resumed up to end of lease, or at least up to first break in lease. Loss on drains put in (with or without notice) and on fences. (See Form, Appendix VI.)
6. Generally, compensation for loss of rights of an away-going tenant in respect of the land taken, including sometimes loss of an away-going crop.
7. Anything valuable belonging to the tenant which passes over with the land taken, due regard being had to the terms of his lease.
8. Compensation either to landlord or tenant for loss in connection with adjusting their relations. The lease will have to be modified in many respects.
9. Expenses incurred in connection with any of the items of claim and the settlement thereof.

It will be seen that the claims may, in some instances, be formidable, so formidable that the Board or the Land Court may well endeavour to transfer part of the burden from the Board to the new holders, nor is there anything unreasonable in their doing so as regards parts at least of 1, 2, and possibly 6 and 7, in so far as the new holders derive benefit therefrom. This could be done as part of the conditions of entry of new holder under sub-section 9 or sub-section 11 (*d*), *supra*. In a few instances some adjustments may be made with the landlord under 11 (*d*).

27. As regards damage or injury to any landlord either in respect of an obligation to take over sheep stock at a valuation, or in respect of any depreciation in the value of the estate of which the land forms part, there may again be a large bill to pay in name of compensation. In the case of an obligation to take over sheep stock at valuation, it is not quite clear that the tenants claim against the landlord is to be fixed by the Land Court, but it is thought that Court has power to do so under 11 (*d*), *supra*. The sum to be paid by the landlord, and any expense incurred in connection with the fixing thereof, will doubtless fall to be paid by the Board under the Land Court's decision. On the general claim for depreciation in the letting value of the land, each case will of course have to be decided on its own circumstances.

In some cases there should be no depreciation, in others it will be very considerable, where, for example, the land is part of a golf course or forms part of a deer forest, or is otherwise kept or preserved mainly for sporting purposes (see Sec. 26 (5), *infra*).

28. A question may arise whether the loss and expense to which a landlord might be put in consequence of calling up of bonds on the estate, if this were due to depreciation in value of the estate to any extent consequent on the taking of the land and the constitution of the new holdings, would be a valid claim. Why not?

29. The parties here are the parties who have right to claim compensation. The procedure regarding evidence will doubtless be as provided for under Sec. 25 (3), *infra*. See also Sec. 24 (8), Act 1886.

It is clear that the Land Court can refuse to proceed with a scheme after putting the parties interested to the trouble and expense of ascertaining the amount payable for compensation. Equity suggests that in such case the expenses ought to be refunded, but there is only express provision for expenses where the matter is referred to an arbiter (sub-sec. 11, *supra*).

30. In deciding these questions it is thought that the arbiter would not be bound to base his estimate of damage to letting value on the reduction of rent allowed to the tenant whose land is taken, and on the rent fixed by the Land Court to be paid by the new holder for that land. These factors may be guides but are not absolute. All the circumstances require consideration. (See Forms, Appendices III. and VI.)

31. Qualified in the opinion of the Land Court (see sub-sec. 14, *infra*).

32. See Sec. 15, *infra*, and Sec. 27, Act 1886.

33. Presumably he must be in good health and able by himself or his family to cultivate the holding (see Sec. 21, *infra*). He must have adequate capital.

34. These objections may be such as are indicated in preceding note. The Land Court are here put in very much the same position as the Sheriff occupies under Section 19 of the Agricultural Holdings (Scotland) Act, 1908, regarding the refusal of a landlord to accept a legatee as tenant.

35. Under this provision the best part of an extensive sheep farm could be taken, but the compensation payable may be a safeguard.

36. Available in terms of the Act, and particularly sub-secs. (2) (5) (16), *infra*, Sec. 16 (2), *infra*, and Sec. 13, Act 1886. See Introduction, p. 5.

37. See definition in Section 36, Agricultural Holdings (Scotland) Act, 1908. "So long as the lease remains in force." There may be difficulty here, because by Section 18 of the Agricultural Holdings (Scotland) Act, 1908, it is provided that notwithstanding the stipulated endurance of any lease, the tenancy shall not come to an end unless written notice is given by either party to terminate it as follows:—in the case of leases for three years and upwards not less than one year's notice, and in the case of year to year leases, not less than six months' notice. Does the "lease" not remain in force in the absence

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of such notice? On the whole, it seems possible to hold that the lease has ceased to remain in force, though the tenancy is renewed for a year by tacit relocation on the same terms, the renewal being a new tenancy, not merely a continuation or extension of the former lease (Bell's Pr., 1265; *Forbes* v. *Lady Saltoun's Exrs.*, 1735, Elch. Cautioner, 4; *Macfarlane* v. *Mitchell*, 1900, 2 F., 901, 37 S.L.R. 705). At the same time the point is not free from doubt. The definition of "termination of lease" in Section 31, *infra*, does not assist.

38. See Sec. 29.

Provisions regulating loans to landholders.

8.—(1) The agreement for any assistance given to a landholder by way of loan under the immediately preceding section [1] shall be recorded in the Landholders' Holdings Book,[2] and, as recorded, shall have the effect of transferring to the Board all rights of the landholder and his statutory successors [3] to compensation for permanent improvements [4] up to the amount of any outstanding liability owing to the Board,[5] provided that the amount of such compensation when claimed shall in such case in the event of dispute be assessed by the Land Court, and provided further that any amount due to the Board from a landlord [6] under this section may, if the Board on the application of the landlord so determine, be deemed to be a loan to the landlord (secured on the holding and on any buildings thereon) within the meaning of Section 6 of the Congested Districts (Scotland) Act, 1897, to which the provisions of that section shall apply.

60 & 61 Vict. c. 53.

(2) In the event of breach by a landholder of the conditions of repayment of any loan under the immediately preceding section the Land Court may, on the application of the Board, and after consideration of any objections stated by the landlord, make an order for the removal of the landholder from the holding as if he had broken a statutory condition,[7] and for the assignation of the holding to some one person (being an applicant therefor) subject to such conditions [8] as they see fit, and such person shall thereupon succeed to the holding of the landholder and shall be deemed to be his statutory successor.[9]

(3) All moneys received for payment of interest or repayment of principal or otherwise in respect of any loan [10] made by the Board under the immediately preceding section shall be paid to the fund out of which the loan was made.

(4) The Land Court shall, on the application of the Board or of the landlord or the landholder, append to their order fixing a fair rent for a holding, a record specifying the condition of the cultiva-

tion of the holding, and of the buildings and other permanent improvements thereon, and by whom such permanent improvements have been executed or paid for.[11] Sec. 8.

1. Sub-sec. (7), *supra*.
2. Sec. 27, Act 1886. See also Secs. 6 and 7, Act 1897.
3. See definition, Sec. 31.
4. Sec. 8 and Schedule to Act 1886. It is thought that this would extend to permanent improvements under the Agricultural Holdings (Scotland) Act, 1908.
5. For loans under Sec. 7 (7), *supra*, and Sec. 9. But this is subject to the provisions of Sec. 23.
6. For the compensation transferred to the Board.
7. Sec. 3, Act 1886, and Sec. 10, *infra*.
8. It might be suggested that the rent could not be altered, except with the landlord's consent, before the lapse of seven years since it was previously fixed by the Land Court, seeing the new tenant is to be "deemed to be the former tenant's statutory successor; but on the other hand, as the landlord must, in respect of Sec. 8, Act 1886, pay compensation for the permanent improvements, it would appear that a new rent would have to be fixed for the land along with the buildings, and it is thought the Land Court are entitled to do this under this section, which allows them to impose such conditions as they see fit. They might require the new landholder to take over and pay for the buildings and other improvements.
9. See definition, Sec. 31, *infra*.
10. See note 5, *supra*.
11. This is similar to Section 24 of the Agricultural Holdings (Scotland) Act, 1908.

9.—The Board may, where they are of opinion that assistance should be provided for the improvement or rebuilding of dwelling-houses or other buildings[1] of landholders or cottars,[2] provide such assistance by way of loan, subject to the like conditions and incidents as loans made under section seven, and if made to a landholder, subject to the provisions of section eight of this Act. Loans for buildings.

1. See Sec. 7 (7).
2. See Sec. 34, Act 1886.

10.—The following conditions are hereby prescribed as statutory conditions[1] additional to or in modification of those prescribed in section one of the Act of 1886:— Additional statutory conditions.

(1) The landholder[2] shall, by himself or his family, with or without hired labour, cultivate his holding, without pre-

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judice to the right (which is hereby conferred upon him) to make such use thereof for subsidiary or auxiliary occupations[3] as in case of dispute the Land Court may find to be reasonable and not inconsistent with the cultivation of the holding; provided that the expression "cultivate" in this sub-section shall include the use of a holding for horticulture or for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables and the like:[4]

(2) The expression "passing of this Act" in sub-section four of section one of the Act of 1886 shall, in the application of that sub-section to landholders other than existing crofters and the statutory successors of existing crofters, be construed as meaning the date at which the Landholders Acts first applied to the holding.[5] Provided always that nothing in the said sub-section shall be construed as debarring a landholder from subletting his dwelling-house to holiday visitors; and provided further that the provision as to dwelling-houses in the said sub-section shall not apply to a new holder, but a new holder and his statutory successors[6] shall not, without the consent in writing of the landlord and the Board erect or suffer to be erected on the holding more than one dwelling house:

(3) Nothing in sub-section seven of section one of the Act of 1886 shall be construed as precluding a landholder from recovering any compensation for damage by game which under section nine of the Agricultural Holdings (Scotland) Act, 1908, is recoverable by a tenant, and the last-mentioned section shall apply accordingly with the substitution of the Land Court for arbitration.

8 Edw. 7, c. 64.

1. See Sec. 1, Act 1886, and Introduction, p. 15.
2. See Sec. 2 (2).
3. *E.g.* using a building to store fishing material, nets, &c. The Crofters Commission have held, however, that a tenant of about an acre which he proposed to work as a market garden was a crofter (*MacAndie* v. *Countess of Cromartie*, C.C. Report, 1908-9 p. xiii.). Some idea of what may be considered as subsidiary or auxiliary occupations, at all events in the highlands, may be gathered from Sec. 4, Act 1897.
4. Is he to be allowed to use it in whole or in part as a market garden where that was not done before, to the effect of having right to claim compensation as for a market garden under the Agricultural

Holdings (Scotland) Act, 1908, and particularly Section 29 thereof? Certainly a tenant, at the commencement of the Act of 1911, of a market garden cannot be held an existing yearly tenant or qualified leaseholder (Sec. 26 (3), *infra*). and the definition of market garden under the Agricultural Holdings (Scotland) Act, 1908, is "a holding cultivated wholly or mainly for the purpose of the trade or business of market gardening." This is an important question, both in respect of the large amount of compensation that might be claimable and in respect of Sec. 32 (11), *infra*. On the whole it is thought that a "landholder" within the meaning of this Act, cannot be, or become, except by agreement with the landlord, a "market gardener," within the meaning of the Agricultural Holdings (Scotland) Act, 1908, so as to entitle him to claim market garden compensation under that Act and relative Schedule. The Schedule to Act 1886 seems to indicate this, so far as buildings are concerned.

5. It is thought that notwithstanding Sec. 32 (2) it would be held that the Acts do not apply within the meaning of this sub-section till the statutory small tenant becomes a landholder.

6. See definition Sec. 31.

Obligations of new holders under Public Health Act. 60 & 61 Vict. c. 38.

11.—Where buildings or other premises within the meaning of the Public Health (Scotland) Act, 1897, have been erected on a holding by or for a new holder,[1] all duties or liabilities imposed on the owner of such premises under any provision relating to the removal or remedy of a nuisance or the provision of a water supply contained in the said Act shall, so long as the landlord receives no rent or other consideration in respect of such buildings or other premises[2] (and failing agreement with the landlord to the contrary), be transferred to and discharged by the landholder, and the said Act shall be read and construed accordingly.

1. This would evidently apply though the building was erected by means of a loan from the Board under Secs. 7 (7) and 9.

2. When the landholder quits, and the landlord takes over the buildings on paying compensation, the land with the buildings, if assigned or let to a new holder (under Sec. 8 (2), *supra*) would bear a rent, and thereafter the relief to the landlord under this section would fly off.

Use by landlord of water rising on a holding.

12.—A landlord may, on payment of compensation for any surface damage, use for any estate purpose any springs of water rising on a holding and not required for the use thereof: Provided that any dispute as to the requirements of the holding or the amount of compensation under this section shall be determined

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by the Land Court; and provided further that nothing herein contained shall be construed as affecting the rights of any persons other than the landlord and the landholder.[1]

1. This applies also to statutory small tenants (Sec. 32 (14)). If you affect the rights of the landlord, do you not also necessarily affect the rights of a bondholder?

Present rent.

13.—The rent payable by a landholder as one of the statutory conditions[1] shall be the present rent, that is to say, the yearly rent, including money and any prestations other than money,—

(*a*) In the case of existing crofters,[2] payable for the year current at the passing of the Act of 1886, or, where the rent so payable has been altered in terms of that Act,[3] payable for the year current at the commencement of this Act;[4]

(*b*) In the case of existing yearly tenants,[5] payable for the year current at the commencement of this Act,[4] and

(*c*) In the case of qualified leaseholders[6] or statutory small tenants becoming landholders,[6] and in the case of new holders,[7] and in the case of landholders whose holdings are enlarged,[8] payable or fixed in respect of the last year of the lease, or at the date of registration,[9] or at the date of enlargement,[10] as the case may be:

in each case unless and until the present rent is altered in manner provided by the Landholders Acts.[11]

1. See Sec. 1, Act 1886, and Sec. 10, *supra*.
2. Sec. 2 (i.), *supra*.
3. Sec. 5, Act 1886.
4. 1st April 1912.
5. Sec. 2 (ii.).
6. Sec. 2 (iii.), and Sec. 32 (11).
7. Sec. 2 (iv.), *supra*.
8. Secs. 11 and 21, Act 1886, and Sec. 16, *infra*.
9. Sec. 2 (iv.).
10. See note 8, *supra*.
11. Secs. 5 and 6, Act 1886, and Sec. 7 (6), *supra*.

Adjustment of rights by Land Court.

14.—In the case of resumption[1] by a landlord, or in the case of an existing yearly tenant or a qualified leaseholder or statutory small tenant becoming a landholder,[2] the rights of parties interested, so far as affected by the operation of this Act, at the date of

resumption or date when such tenant or leaseholder becomes a landholder, as the case may be, shall in the event of dispute be adjusted by order of the Land Court, which order they are hereby empowered to pronounce on the application of any party interested.

1. Sec. 2, Act 1886, and Sec. 19, *infra*.
2. Sec. 2 (iii.), and Sec. 32 (ii.), *supra*.

Registration.

15.—(1) The procedure in connection with applications [1] for registration of new holders under this Act shall be regulated as may be prescribed in rules of the Land Court.

(2) Registration under this Act shall be constituted by an order of the Land Court granting registration, duly recorded, with the application on which it proceeds, in the Landholders' Holdings Book.[2]

1. Sec. 2 (iv.), and Sec. 7 (1).
2. Sec. 27, Act 1886.

Amendment of law as to enlargement of holdings.

16.—(1) The provisions of the Act of 1886,[1] relative to the enlargement of holdings, are hereby extended to an application for enlargement of a holding by a single landholder or two or more landholders, and shall apply in the case of an application by a single landholder as nearly as may be in the same manner and to the same effect as in the case of an application by two or more landholders:

Provided that all applications for enlargement under section eleven of the Act of 1886 shall be made to the Board, and sub-sections (7), (8), (9), (10), (11), (12), (13), (16), (17), and (18) of the section of this Act relative to the constitution of new holdings shall, with the necessary modifications, apply as fully for the purpose of applications for enlargement as for the purpose of the constitution of new holdings; and the expressions "application" and "applicants," where occurring in section twelve or section twenty-one of the Act of 1886, shall be construed as meaning an application from the Board under sub-section nine aforesaid and the persons referred to in such application.[2]

(2) Section thirteen of the Act of 1886 with the exception of sub-section (3) (*e*) thereof shall cease to have effect, provided that land shall not be deemed available land for the enlargement of a holding otherwise than by agreement unless it is land in respect of which a person would be admissible to registration otherwise

Sec. 16.

than by agreement as a new holder under this Act,[3] and, if arable land, unless it lies contiguous or near to land already in the occupancy of the landholder making the application ; and provided further that a holding shall not be enlarged so that the rent or acreage thereof shall exceed the rent or acreage competent for a new holding under this Act.[4]

1. Secs. 11 and 21 thereof.
2. This simply places applications for enlargement of holdings under the same provisions as those which apply to the constitution of new holdings. The application is first made to the Board. Then follows the same procedure under sub-sections 7, 8, &c., *supra*, just as in the case of applications for new holdings. An important result is that compensation now falls to be paid for damage and injury resulting to landlord or tenant by the compulsory enlargement of holdings and to the former by such holdings so enlarged ceasing to be occupied by a landholder. There was no provision under the Act of 1886 for paying such compensation.
3. Sec. 26, *infra*, and Sec. 7, *supra*.
4. *I.e.*, not exceeding £50 (in Lewis £30) unless such land (exclusive of any common pasture or grazing land held or to be held therewith) does not exceed 50 (in Lewis 30) acres. Sec. 26 (3) and Sec. 27, *infra*.

Amendment of law as to vacant holdings.

17.—Where, by reason of renunciation,[1] removal,[2] failure of a statutory successor,[3] or otherwise,[4] a holding has at any time ceased or is about to cease to be held by a landholder, the landlord shall forthwith intimate the fact in writing to the Board, and shall not, if the Land Court on their application[5] after hearing the landlord so determine, and during such period and subject to such conditions (which shall include payment of compensation to the landlord by the Board to such amount as may be agreed,[6] or as, in case of dispute, may be determined by the Land Court, in respect of any loss arising out of such determination) as the Land Court may prescribe, be entitled without the consent of the Board to let the holding otherwise than to a neighbouring landholder for the enlargement of his holding,[7] or to a new holder.[8]

Provided that where, under the provisions of the Landholders Acts, the holding was, otherwise than by agreement[9] constituted as a new holding or enlarged,[10] it shall be the duty of the Land Court, upon an application by the landlord, after hearing the Board,[11] to assess any damage or injury done by the constitution or enlargement of the holding,[12] as the case may be, to the landlord through non-payment of rent in respect of the holding,[13] or

depreciation in the letting value of the land[14] comprised in the holding, or through the imposition of liabilities in respect of or the payment of compensation for permanent improvements thereon,[15] and to require the Board to pay the landlord compensation in respect of such damage or injury to such amount as the Land Court determine, subject to the like procedure and right of alternative arbitration as provided in sub-section (11) of section seven of this Act,[16] but nothing in this proviso contained shall apply to the case of a holding ceasing to be held by a landholder by reason of resumption by the landlord[17] or by reason of the sale of the holding to the landholder. Sec. 17.

1. Sec. 7, Act 1886, and 18, *infra*.
2. Secs. 1 and 3, Act 1886; Sec. 8 (2); 10 (1) (2), *supra*, and 22, *infra*.
3. Secs. 22 and 31, *infra*.
4. See Sec. 22, *infra*.
5. Evidently the Board may do nothing, and in that event the landlord will be free to deal with the holding in any way he may think proper. Only if the Board apply to the Land Court, will the question arise as to the restriction of the landlord's powers. The Land Court may then fix a period during which the holding shall not, without the Board's consent, be let otherwise than to a neighbouring landholder for enlargement of his holding, or to a new holder. On the lapse of the period, the landlord will be free to deal with the holding as he may please.
6. Evidently between the Board and the landlord; similar to provision in Sec. 7 (8), *supra*.
7. Secs. 11 and 21, Act 1886, and Sec. 16, *supra*.
8. Sec. 2 (iv.), and Sec. 7, *supra*.
9. Sec. 7, *supra*.
10. Note 7, *supra*.
11. It may be presumed that the Land Court will not only hear the Board but also the landlord, and that they will also hear evidence should such be offered. They have power to do so under Sec. 25 (3), *infra*. It is evidently an omission not to expressly provide for evidence here as is done under Sec. 7 (11), *supra*.
12. The idea here is that the Legislature having compulsorily taken land for small holdings, ought to compensate the owner for all loss he may sustain should a suitable person not be available to occupy it as a "landholder," for which purpose it was constituted.
13. It is difficult to say if this applies to the rent payable by the landholder renouncing, or being removed, &c., or only to the rent during the period of unlet. It would rather appear as if the latter view is the correct one; so much appears to be suggested by the qualification at the end of this proviso. It will be noted that it is not

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necessarily the whole of the unpaid rent; it is only so much thereof as can be attributed to the constitution or enlargement of the holding—a very difficult question to decide.

14. If compensation was paid under this head at the time the new holding was constituted (as provided for by Section 7), it would appear to be reasonable to assume that that compensation was fixed on the assumption that a person would always be available to occupy the holding as a "landholder." This section, however, allows the question of the compensation for depreciation in letting value to be re-opened on that assumption being disproved by the fact. If this view be correct then it would appear equitable, assuming compensation was paid at the time of constitution, to start with the fair rent as last fixed by agreement, or as last fixed by the Land Court, as the datum line from which to determine whether there has been depreciation in the letting value. The comparison will doubtless be between that fair rent and the rent which can be obtained from letting the holding in the usual way to an ordinary tenant, whether as a separate holding or as an addition to an adjacent farm. The question will be complicated by the fact that the fair rent would probably not include anything for buildings or other permanent improvement. The reasonable course seems to be to take said fair rent, add to it a reasonable sum to represent interest on the amount paid or to be paid by the landlord for the improvements, and from the total deduct the amount of rent obtainable from letting the holding and buildings, &c., in the usual way, to an ordinary tenant. The difference capitalized would indicate the depreciation in letting value arising from the constitution of the holding on its ceasing to be occupied by a landholder.

15. Here again this does not mean that the landlord is to be relieved of the whole sum representing the value of the permanent improvements, because all that sum may not be loss. There is a peculiarity here in the fact that the compensation is to be fixed at the value to an incoming tenant (Sec. 10, Act 1886, and Sec. 1 (1), Agricultural Holdings (Scotland) Act, 1908). It may be asked where then comes in the landlord's loss? The idea appears to be that if the landlord fails to find a tenant, or only finds one willing to pay a small rent, he may not get an adequate return for the improvement expenditure, and that accordingly he ought to be compensated for resulting loss, or it may be that the improvements are superfluous on adding the holding to an adjacent farm.

16. See Note to Sec. 7 (11.), and Appendices III. and VI.

17. Sec. 2, Act 1886, and Sec 19, *infra*.

Amendment of law as to renunciation of holdings.

18.—Section seven of the Act of 1886 shall be amended by the insertion at the end thereof of the following words:—

Provided that such notice shall not, without the consent of the Land Court, be effective unless, within two months from the date of notice, the landlord or the landholder intimates the same in

writing to the Board, and provided further that except by agreement with the Board the landholder shall not without the like consent be entitled to renounce his tenancy so long as any liability owing by him to the Board is not wholly discharged.[1] Sec. 18.

1. Secs. 7, 8, 9, *supra*. Now it is not enough to merely give a year's notice to the landlord. This must be followed by the intimation here required to the Board, and the Board's consent is required in all cases in which the landholder's indebtedness to them is not cleared off.

Declaration of law as to resumption of holdings.

19.—Without prejudice to the generality of the power to authorise resumption[1] by the landlord for some reasonable purpose having relation to the good of the holding or of the estate, conferred by section two of the Act of 1886, the feuing of land, or the occupation by a landlord for the purpose of personally residing thereon of a holding, being his only landed estate, or the protection of an ancient monument or other object of historical or archæological interest from destruction or injury, shall respectively be deemed a reasonable purpose as aforesaid.

1. Sec. 2, Act 1886, and Secs. 14 and 19, *supra*.

Amendment of law as to bequest of holdings.

20.—Section sixteen of the Act of 1886 is hereby amended by the substitution of "Land Court" for "sheriff," wherever occurring therein, and of the words "two months" for the words "twenty-one days" occurring in sub-section (*a*) thereof, and shall be read and construed accordingly with the necessary modifications.

Assignment of holding.

21.—In the event of a landholder being unable to work his holding through illness, old age, or infirmity,[1] he may apply to the Land Court for leave to assign[2] his holding to a member of his family, being his wife or any person who, failing nearer heirs, would succeed him in the case of intestacy,[3] and if, after intimation to the landlord and any other party interested, and such hearing or inquiry as the Land Court may consider necessary,[4] it appears to the Land Court that such assignment would be reasonable and proper, it shall be competent to the Land Court to grant such leave on such terms and conditions, if any, as may to them seem fit.

1. Nowhere is the landholder bound to work the holding by himself alone. It must be, however, by himself or his family, with or without hired labour (Sec. 2 (1), and 10, *supra*).
2. Thus not infringing Sec. 1 (2), Act 1886.

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3. He may bequeath to the same class under Sec. 16, Act 1886. The effect is only as it were to propel the succession. See Notes to that Section, and Note 12 to Sec. 2, *supra*.

4. See Sec. 25 (3), *infra*.

Loss of rights by heir in certain cases.

22.—Where, owing to the failure of the landholder to bequeath his tenancy or of the legatee to accept the bequest,[1] the right of the tenancy devolves upon the heir-at-law of the landholder, the landlord may give notice in writing to such heir, if his name and address are known to, or can by due diligence[2] be ascertained by, the landlord, requiring him to state whether or not he elects to accept the tenancy, and in case such heir shall not, within six weeks after the receipt of such notice, declare that he elects to accept the tenancy, his rights to the tenancy shall pass to the next heir, and the same procedure shall apply:[3] provided that if such heir be furth of the United Kingdom the Land Court may grant such extension of the period hereinbefore specified as may seem to them to be reasonable. And provided further, that if the name and address of such heir or next heir are not known to, or cannot by due diligence be ascertained by, the landlord, and no application is made by them with regard to the succession to the holding during six months after the death of the last landholder, failure of a statutory successor shall be deemed to have taken place.[4]

1. Sec. 16, Act 1886.
2. What "due diligence" may mean it is not easy to say. It would be too much to expect the landlord to incur expense of advertising for the heir and for succeeding heirs, &c. The making of local enquiries should suffice, but the Land Court will want to be satisfied.
3. Presumably if the "next heir" does not reply within six weeks, there is "failure of a statutory successor."
4. Then follows the procedure under Sec. 17, *supra*.

Arrears of rent to be set off against compensation for improvements.

23.—If a landholder either renounces[1] or is removed[2] from his holding, the landlord shall be entitled to set off all rent due, or to become due,[3] against any sum found to be due to the landholder, or to the Board for improvements[4] made on the holding.

1. Secs. 7, Act 1886, and 18, *supra*.
2. Secs. 1 and 3, Act 1886; Sec. 8 (2), 10 (1), (2), and 22, *supra*; Secs. 7 (7), 8, 9 and 17, *supra*.
3. by the landholder renouncing or being removed.
4. "Improvements" here is general, and is only limited to such as would form ground of claim for compensation, either under the Land-

holders Acts, or under the Agricultural Holdings (Scotland) Act, 1908. The reason for taking into consideration the sum due to the Board is explained by Secs. 7 (7), 8 and 9, *supra*. Sec. 23.

Amendment of law as to regulation of common grazings, &c.

24.[1]—(1) The Land Court may prescribe such regulations as to the exercise of pasture, grazing or other rights held or to be held in common under the Landholders Acts[2] as they think expedient.

(2) The Land Court shall cause any proceeding under the immediately preceding sub-section to be intimated to any person or persons, whether landholders or not, using or claiming to use the pasture or grazing or other rights to which the proceeding relates, and shall hear such person or persons on his or their application, and make such inquiry as they may deem necessary, and may make applicable to such person or persons any regulations prescribed under such proceeding: Provided that such regulations may contain provision for the removal by any person prescribed in the regulations of any stock placed on the common pasture or grazing in contravention of the regulations.

(3) Any person committing a breach of any regulations prescribed under this section or an infringement of any scheme drawn up by the Crofters Commission or the Land Court, as the case may be, under the powers conferred by section twelve of the Act of 1886, shall be liable on conviction before the sheriff under the Summary Jurisdiction Acts to a penalty not exceeding forty shillings, and in the case of a continuing offence to a further penalty not exceeding five shillings for each day during which such offence shall have been continued after written warning from the committee or from the Land Court, and any such penalty shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts.

(4) The Land Court may suspend or remove members of a committee under the Act of 1891 as amended, if satisfied that they are not properly carrying out the regulations respecting a common pasture or grazing, and may appoint or provide for the appointment of other persons (whether landholders or not) in their place. Where those interested in a common pasture or grazing decline to act on such a committee, the Land Court may appoint any person or persons in the neighbourhood, whether landholders or not, with the powers and duties of such a committee. Where the Land Court are satisfied that in lieu of such a committee a grazings constable should be appointed or elected for any township or group of town-

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ships or persons interested, they may make provision accordingly, and any regulations making such provision shall be deemed to be regulations prescribed under this section, and the grazings constable may enforce such regulations, and shall be paid by assessment upon those using the pasture or grazing in manner provided by the Land Court, but not in excess of sixpence in the pound of rent.

The words "not being less than three or more than five," occurring in section two of the Act of 1891, are hereby repealed.

(5) The Land Court may, on the application of the landlord, or landlords, or any landholder, and for such period and on such conditions as they consider equitable, apportion a common grazing into separate parts for the exclusive use of the several townships or persons interested, either as arable ground or as pasture, if satisfied that such apportionment is for the good of the estate or estates, and of the holdings or tenancies concerned.[3]

(6) The Land Court may, on the application of the landlord, or landlords, or any landholder, apportion lands held runrig among the holders thereof in such manner as appears to them in the circumstances of each case to be just and expedient.[4]

1. This Section must be read along with the Act of 1891 "to regulate crofters' common grazings," the Act of 1908, and Sec. 5, Act 1897. See also Sec. 12, Act 1886.
2. Sec. 2 (1), *supra*.
3. See Sec. 5 (5), Act 1897.
4. This does not of course affect the title of the landlord. It has been found expedient, from the experience of the Crofters Commission, to give the Land Court this power. The Commission in a case before them said, "We have no power to convert runrig holdings into compact individual blocks unless all parties concerned agree to our doing so. . . . Runrig cultivation is inimical to agricultural progress, and frequently leads to disputes among the tenants. . . . On these grounds it should be abolished wherever it is found practical."—(CC. Report 1906-7, p. x.)

Jurisdiction of Land Court.

25.[1]—(1) The Land Court shall be a body corporate with a common seal. Judicial notice shall be taken by all courts of justice of the corporate seal of the Land Court, and any order or other instrument purporting to be signed with it shall be received as evidence without further proof. All orders and determinations of the Land Court shall be in writing.

Sec. 25.

(2) For the purposes of the Landholders Acts,[1] the Land Court shall have full power and jurisdiction to hear and determine all matters, whether of law or fact,[2] and no other court shall review the orders or determinations of the Land Court:[3] Provided that the Land Court may if they think fit, and shall on the request of any party, state a special case on any question of law arising in any proceedings pending before them, for the opinion of either Division of the Court of Session, who are hereby authorised finally to determine the same.

(3) The Land Court may without prejudice to any provision contained in section seven of this Act ascertain the facts in any case by hearing parties and examining witnesses, or by means of affidavits, or by such other mode of inquiry as they may deem appropriate, and may require the production of all books, papers, plans, and documents relating to the case, and without prejudice to the provisions of section twenty-four of the Act of 1886, they may summon and examine on oath such witnesses as they think fit to call or allow to appear before them. They may, when sitting in open court, report in writing to the Lord Ordinary on the Bills any person who has been guilty of contempt of court; and the Lord Ordinary may punish such person as if the contempt had been committed in his own court, provided that when the Chairman is so sitting he shall have the same power as the Lord Ordinary to punish contempt of court.

(4) The Land Court may determine the amount of the expenses in any proceedings before the Court and the proportion to be borne by the different parties.

(5) Three members of the Land Court shall be a quorum: Provided that it shall be lawful for the Land Court to delegate such of their powers as they think expedient to any one member or to any two members of the Court, with or without the assistance of one or more land valuers, assessors, or other skilled persons, and from time to time to revoke, alter, or modify any such delegation of powers; but any order or determination arrived at under such delegation shall be subject to review upon appeal by three or more members of the Court (including where such court of review consists of three members not more than one member who was a party to such order or determination) sitting together, one of whom shall be the chairman of the Land Court.

(6) An order of the Land Court may be presented to the sheriff,

Sec. 25. and the sheriff, if satisfied that the order has been duly recorded,[4] shall pronounce decree in conformity with such order on which execution and diligence shall proceed.

1. See Introduction, p. 37, and Sec. 3, *supra*. This section applies with necessary modifications to "statutory small tenants" (Sec. 32 (14), *infra*).
2. Sec. 2 (1), *supra*. It will be noted that they are only empowered to decide for the purposes of the *Landholders Acts*. It is thought they would not be entitled to decide questions of heritable title, because though in some cases that might be necessary for the purposes of these Acts, still it would go beyond these purposes, and it would never do to take such an important matter out of the power of the ordinary Courts with right of appeal to the House of Lords. The Court of Session held that they had jurisdiction to deal with an action of declarator and interdict by a landlord against crofters whose holdings adjoined his lands, and who claimed that at the date of the Act of 1886 they had rights of pasturage over his property, notwithstanding an application had been made by the crofters, prior to the raising of the action, to have fair rents fixed (*Duke of Sutherland* v. *Reed*, 1890, 18 R. 252). In *Breadalbane* v. *Orr*, 1896, 4 S.L.T. 118, it was held by the Lord Ordinary that the Crofters Commission not being a Court of Law, the dependence of a question before them does not warrant the plea *lis alibi pendens*. Certainly the Land Court has not exclusive jurisdiction, and they will not be likely to attempt to review any decision either of the Sheriff Court or of the Court of Session. The Crofters Commission acknowledged that they had no power to do so (CC. Report 1906, pp. xii. and xiii.).
3. The Court of Session, while it will not review the orders and determination of the Land Court, will not be slow to keep that Court strictly within the limits of its powers and jurisdiction. (See Form, Appendix VI.)
4. in the Landholders' Holdings Book. (Sec. 27, Act 1886.)

Supplementary provisions and restrictions.

26.—(1) For the purposes of the Landholders Acts [1] a holding shall be deemed to include any right in pasture or grazing land held or to be held by the tenant or landholder whether alone or in common with others, and the site of any dwelling-house erected or to be erected on the holding or held or to be held therewith, and of any offices or other conveniences connected with such dwelling-house.[2]

(2) A person shall not be admissible to registration as a new holder [3] under this Act in respect of land belonging to more than one landlord or in respect of more than one holding, and shall not be held an existing yearly tenant or a qualified leaseholder in respect thereof unless such land or holdings have been worked as one holding.[4]

(3) A person shall not be held an existing yearly tenant or a qualified leaseholder[5] under this Act in respect of—

(*a*) Any land the present rent[6] of which within the meaning of this Act exceeds fifty pounds in money, unless such land (exclusive of any common pasture, or grazing, held or to be held therewith) does not exceed fifty acres[7] (but without prejudice to the power of the Land Court, in determining from time to time a fair rent, to fix a rent exceeding fifty pounds[8]); or

(*b*) Any land being garden ground only, appurtenant to a house, or any land to which as the site of or as required for the protection of or for an access to an ancient monument or other object of historical or archæological interest the Land Court determine that the Landholders Acts should not apply; or

(*c*) Any land within the parliamentary, police or municipal boundary of any burgh or police burgh; or

(*d*) Any land being a market garden within the meaning of the Agricultural Holdings (Scotland) Act, 1908; or — 8 Edw. 7, c. 64.

(*e*) Any land being or forming part of any glebe, or any small holding under the Small Holdings Act, 1892, or any allotment under the Allotments (Scotland) Act, 1892, or the Local Government (Scotland) Act, 1894; or — 55 & 56 Vict. c. 31. 55 & 56 Vict. c. 54. 57 & 58 Vict. c. 58.

(*f*) Any land that is not a holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908; or

(*g*) Any land being woodland, or being or forming part of the home farm of any estate,[9] or of any policy or park, or of any pleasure ground or other land used for the amenity or convenience of any residence or farm-steading; or being permanent grass park[10] held for the purposes of a business or calling not primarily agricultural or pastoral, including that of butcher, cattledealer, and the like; or

(*h*) Any land *bona fide* held and used for purposes of public recreation;[11] or

(*i*) Any land acquired whether compulsorily or by agreement for any undertaking of a public nature, under the authority of any Act of Parliament or any order having the force of an Act of Parliament.

(4) A person shall not be admissible to registration as a new holder[12] under this Act in respect of any land referred to in para-

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graphs (*a*), (*b*), (*c*), (*d*), or (*e*) or except by agreement,[13] in respect of any land referred to in paragraphs (*g*), (*h*), or (*i*) of the immediately preceding sub-section, or in respect of any holding which is not either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral.

(5) Nothing in this Act shall operate to prevent the registration[14] of a new holder[12] or the enlargement of a holding[15] (whether by agreement or otherwise in either case) in respect of land comprised in a deer forest or otherwise kept or preserved mainly or exclusively for sporting purposes,[16] but subject always to the provisions of section seven and section sixteen of this Act as the case may be.

(6) Notwithstanding anything contained in sub-section one of this section, the holding of any existing yearly tenant or qualified leaseholder[17] within the meaning of this Act shall not for the purposes of the Landholders Acts be deemed to include any lands or heritages at the commencement of this Act forming part of such holding and occupied by a sub-tenant of such existing yearly tenant or qualified leaseholder, whether paying rent or not.

(7) A person shall not be held an existing yearly tenant or a qualified leaseholder[17] under this Act in respect of a holding referred to in section thirty-three of the Act of 1886, but nothing in that section shall operate to prevent the registration of a new holder[12] by agreement[13] in respect of a holding referred to therein, or the application of the Landholders Acts[1] to such new holder[12] and his statutory successors[18] in respect of the holding. For the word "nor" where last occurring in that section the word "or" is hereby substituted.

(8) The provisions of section two of this Act shall extend to and include joint tenants being existing crofters, existing yearly tenants, or qualified leaseholders;[17] but not more than one person shall be registered as a new holder[12] in respect of any holding, and (without prejudice to the continuance of a joint tenancy through statutory successors[18]) where at any time after the commencement of this Act a holding is held by a single landholder, or a holding which has been held in joint tenancy ceases to be so held, it shall not be competent for more than one person to be a landholder in respect of such holding.

(9) Except so far as may be inconsistent with any express provision of this Act the tenancy of a landholder under the Landholders Acts[1] shall, in the case of every existing crofter,[19] be

deemed to be in all respects a continuance of his tenancy as a crofter under the Crofters Acts,[20] and all contracts and other deeds and documents shall be read and construed accordingly. Sec. 26.

(10) A person shall not be subject to the provisions of this Act regarding statutory small tenants[21] who in terms of this section would be disqualified from being an existing yearly tenant or a qualified leaseholder.[17]

1. Sec. 2 (1), *supra*. See Introduction, p. 2.
2. See sub-sec. 6, *infra*. This sub-sec. (1) also applies to statutory small tenancies, Sec. 32 (14).
3. Secs. 2 (iv.) and 7, *supra*.
4. Any question under this sub-section would be settled by the Land Court, Sec. 25 (2), *supra*.
5. Sec. 2 (ii.) (iii.), *supra* ; also Sec. 27, *infra*.
6. Sec. 13, *supra*.
7. Imperial acres.
8. These limits are reduced as regards the Island of Lewis (Sec. 27). In point of fact the Land Court will often have to fix rents exceeding £50.
9. Even though the home farm be let to a tenant, it is thought this would apply, because a landlord ought not to be prevented from resuming the home farm for his own use, any more than the owner of a "holding" is entitled to resume it for his own occupancy under Section 19, *supra*. When home farms are let, the landlord often stipulates that he shall get supplies therefrom. A home farm let might be protected under Sec. 7 (2) and (5).
10. The fact that a grass park was broken up for the purpose of being re-sown with permanent grass seeds, would not alter its character so as to enable it to be taken to constitute a small holding.
11. Would use by a private Golf Club be "public recreation." It is thought it would not, but the penalty in the shape of compensation would probably be a sufficient safeguard against the taking of land so used (Secs. 7 and 17, *supra*).
12. Secs. 2 (iv.) and 15, *supra*.
13. Sec. 7, *supra*. The restriction to holdings either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, should be read along with Sec. 7 (16).
14. Secs. 7 and 15, *supra*.
15. Secs. 11 and 21, Act 1886, and Sec. 16, *supra*.
16. Sec. 13 (3) (*e*), Act 1886. The provisions of Sections 7 and 17 regarding compensation will probably operate to prevent much land being taken off deer forests, &c.
17. Sec. 2 (ii.) (iii.), *supra*.
18. Sec. 31, *infra*. The Crofter Commission in a case before them said, "It is clear that one joint tenant cannot without the concurrence of the other joint tenant, apply to have a fair rent fixed. . . .

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We have no power to divide a joint tenancy into two or more holdings under an application by one joint tenant, unless all the joint tenants and also the landlord agree to such a change being effected. Failing agreement, the only way in which a change of the sort can be effected is by the landlord applying for resumption for the purpose of re-division among the joint tenants" (*Cameron* v. *Lady Gordon Cathcart*, C.C. Report 1909-10, p. xi.). In a case where a crofter assumes another with him jointly under an arrangement with the landlord who gave a reduced rent and wiped out some arrears at the time, it was held that the Act applied to the joint tenancy (C.C. Report 1909-10, p. xiii.).

19. Sec. 2 (1), *supra*.

20. Sec. 31, *infra*.

21. Sec. 32.

Special provision for the Island of Lewis.

27.—In the Island of Lewis, in so far as it lies within the county of Ross and Cromarty, a person shall not be held an existing yearly tenant or qualified leaseholder [1] under this Act in respect of any land the present rent [2] of which within the meaning of this Act exceeds thirty pounds in money, unless such land (exclusive of any common pasture or grazing land held or to be held therewith) does not exceed thirty acres (but without prejudice to the power of the Land Court, in determining from time to time a fair rent,[3] to fix a rent exceeding thirty pounds.[4]

1. Sec. 2 (ii.) (iii.), *supra*.

2. Sec. 13, *supra*.

3. Compare with Sec. 26 (3) (*a*), *supra*.

4. Sec. 6, Act 1886.

Transfer of powers and duties.
60 & 61 Vict. c. 53.

28.—(1) From and after the commencement of this Act [1] the Crofters Commission established by section seventeen of the Act of 1886, and the Congested Districts (Scotland) Commissioners established by the Congested Districts (Scotland) Act, 1897, shall cease to exist, and all the powers and duties vested in or imposed on the Crofters Commission by any Act of Parliament in force at such date shall, subject to the provisions of this Act,[2] be vested in, transferred to, and imposed on the Land Court, and all the powers and duties vested in or imposed on the Congested Districts (Scotland) Commissioners by the Congested Districts (Scotland) Act, 1897, shall, subject as aforesaid,[3] be vested in, transferred to, and imposed on the Board, and except as otherwise provided by this Act all such powers and duties shall be exercised and

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and performed by the Land Court or the Board, as the case may be, as nearly as may be in like manner and subject to the same conditions, liabilities, and incidents respectively as such powers and duties might before such date have been exercised and performed by such Commission or Commissioners respectively, and in the construction and for the purposes of any Act of Parliament, contract, order, regulation, decree, award or other document, made, passed, entered into. or executed, or of any action or proceeding raised before such date, the name of the Land Court or the Board, as the case may be, shall be deemed to be substituted for such Commission or Commissioners respectively.

(2) All powers and duties transferred to the Board from the Board of Agriculture and Fisheries by this Act,[5] or any Order in Council made in pursuance thereof,[6] shall be exercised and performed by the Board as nearly as may be in like manner and subject to the same conditions, liabilities, and incidents as such powers and duties might before the date of transfer have been exercised and performed by the Board of Agriculture and Fisheries; and in the construction and for the purposes of any Act of Parliament, contract, order, regulation, decree, award, or other document made, passed, entered into, or executed, or of any action or proceeding raised before the date of transfer, but so far only as may be necessary for the exercise of the powers or the discharge of the duties transferred, the name of the Board shall be substituted for the Board of Agriculture and Fisheries.

1. 1st April 1912.
2. Sec. 3, *supra*.
3. Sec. 4, *supra*.
5. Sec. 4 (11), *supra*.
6. Sec. 4 (12), *supra*.

Transfer of property.

29.—All property belonging to, or vested in, or held in trust for the Congested Districts (Scotland) Commissioners shall, from and after the commencement of this Act [1] pass to and vest in and be held in trust for the Board,[2] subject to all debts and liabilities affecting the same, and, subject to the provisions of this Act, shall be held by the Board for the purposes for which it is now held or would have been held if this Act had not passed.[3]

1. 1st April 1912.
2. Sec. 4, *supra*.

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3. This will pass heritable property purchased by the Commissioners under Sec. 5, Act 1897.

Transfer of officers.

30.—Such of the persons employed by the Crofters Commission as the Secretary for Scotland, with the consent of the Treasury, may determine shall, from and after the commencement of this Act,[1] be attached to and be officers of the Land Court, and such of the persons employed by the Congested Districts (Scotland) Commissioners as the Secretary for Scotland, with the consent of the Treasury, may determine shall, from and after the commencement of this Act, be attached to and be officers of the Board; and (without prejudice to any existing rights) persons so transferred shall thereafter, if in the case of any of such persons the Treasury so determine, be permanent civil servants of the Crown within the meaning of section seventeen of the Superannuation Act, 1859.

22 Vict. c. 26.

Provided that any officer of the Congested Districts (Scotland) Commissioners in office at the commencement of this Act who may not be appointed an officer of the Board shall receive such compensation as the Treasury may determine.

1. 1st April 1912.

Definitions.

31.—(1) In this Act—

49 & 50 Vict. c. 29.

The expression "Act of 1886" means the Crofters Holdings (Scotland) Act, 1886:

50 & 51 Vict. c. 24.

The expression "Act of 1887" means the Crofters Holdings (Scotland) Act, 1887:

54 & 55 Vict. c. 41.

The expression "Act of 1891" means the Crofters Common Grazings Regulation Act, 1891:

8 Edw. 7. c. 50.

The expression "Act of 1908" means the Crofters Common Grazings Regulation Act, 1908:

The expression "Crofters Acts" means the Act of 1886, the Act of 1887, the Act of 1891, and the Act of 1908:

The expression "statutory successor" means any person who in terms of the Landholders Acts as the case may be has succeeded or may succeed to a holding whether as heir-at-law or legatee of his immediate predecessor being a crofter or landholder in occupation of the holding:[1]

The expression "termination of the lease" means the ex-

piration of the lease through the running out of the stipulated term of endurance or through the parties, or either of them, exercising their right to take advantage of a break stipulated for in the lease or through any agreement between the parties being made, or other circumstances arising whereby the lease is terminated. Sec. 31.

(2) In the Crofters Acts, the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act, 1896, and the Congested Districts (Scotland) Act, 1897, the expression "holding" shall be substituted for the expression "croft," and the expression "crofting parish"[2] shall be construed as meaning a parish to which the Crofters Acts applied at the commencement of this Act. 59 & 60 Vict. c. 37. 60 & 61 Vict. c. 53.

(3) In the Act of 1886 (except in the case of references to the passing or the title thereof and except in section thirty-two thereof) the expression "this Act" or "the Act" shall be construed as meaning the Landholders Acts.[3]

(4) In section two of the Act of 1887 the expression "principal Act" where first occurring shall be construed as meaning the Landholders Acts,[3] and the expression "The Crofters Holdings Act, 1886," shall be construed as meaning the Act of 1886 or this Act, as the case may be.

(5) If not inconsistent with the context, references in any Act of Parliament to a crofter shall be construed as references to a landholder[4] within the meaning of this Act.

(6) Notwithstanding anything contained in this or any other Act the expression "lessee" in section four of the Lands Valuation (Scotland) Amendment Act, 1895, shall include a landholder in the same way and to the same effect as if a landholder were a lessee holding under a lease or agreement the stipulated duration of which is twenty-one years or under from the date of entry under the same.[5]

1. In many cases the Crofters Commission have held that the heir-at-law by his actings—for example, by making no claim to the holding for ten years—or by being away from the croft for many years while a brother did and paid everything—had waived and abandoned his rights, and they generally declared the next heir to be in right to the croft.—(C.C. Report 1904-5, pp. xiv., xv.) The First Division of the Court of Session confirmed this view in *Maciver* v. *Maciver*, 19th Feb. 1909, S.C. 639; 46 S.L.R. 552.

2. Thus the crofting parishes are finally fixed, and apparently the special

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powers of the Board under the Congested Districts Act must be confined to these parishes. (Sec. 19, Act 1886.)

3. Sec. 2 (1), *supra.*

4. Sec. 2 (2), *supra.*

5. This simply aims at making it quite clear that local taxation is not to be levied on the landholders permanent improvements so long as they have not been taken over and paid for by the landlord, or so long as the landholder does not become owner of the holding. In the latter case it has been decided that the annual value of the buildings must be included in the valuation of the holding (*Ferguson* v. *Assessor for County of Inverness,* 9th Dec. 1911, S.L.T. 505.), even though the price was payable by instalments over 50 years.

Provisions as to statutory small tenants.

32.—With respect to statutory small tenants [1] the following provisions shall have effect:—

(1) A statutory small tenant [1] means and includes a tenant from year to year, or leaseholder, not otherwise disqualified in terms of this Act, in regard to whom section two of this Act, provides that he shall not be held an existing yearly tenant or a qualified leaseholder, and the succesors of such tenant or leaseholder in the holding, being his heirs, legatees (if within the relationship specified in section sixteen of the Act of 1886), or assignees (if assignation be permitted by the lease): [2]

(2) Except so far as expressly applied by this Act, the Landholders Acts [3] shall not apply to statutory small tenants: [1]

(3) A holding which is or has been held by a statutory small tenant shall not be merged in or amalgamated with any other holding as defined in the Agricultural Holdings (Scotland) Act, 1908, except with the sanction of the Board: [4]

8 Edw. 7. c. 64.

(4) Except in any case where the landlord satisfies the Land Court that there is reasonable ground of objection to a statutory small tenant (hereinafter in this section referred to as the tenant) and the Land Court find accordingly, the tenant for the time being shall, notwithstanding any agreement to the contrary, be entitled on any determination of the tenancy to a renewal thereof on the terms and conditions hereinafter specified: [5]

(5) Except so far as varied by this section, the Agricultural Holdings (Scotland) Acts, 1908 and 1910, shall apply

in the case of the tenancy of a statutory small tenant in the same manner as if the tenancy were a lease, and for the purposes of those Acts and otherwise the tenancy, as renewed from time to time, shall be deemed to be a lease current for the period of renewal:

(6) Subject to the provisions of the last-mentioned Acts and of this section, the landlord and the tenant may agree upon the terms and conditions of the renewed tenancy:

(7) Failing agreement, the landlord or the tenant may apply to the Land Court to fix an equitable rent[6] or to fix the period for which the tenancy is to be renewed,[7] and the Land Court may thereafter determine the rent to be paid by the tenant or the period of renewal, or both, as the case may be:

(8) In determining the rent the Land Court shall, so far as practicable, act on their own knowledge and experience,[8] taking into consideration all the circumstances of the case, holding, and district,[9] including the rent at which the holding has been let, the proposed conditions of the renewed tenancy, the improvements made by the landlord and tenant respectively, and the then condition and value of such improvements; and shall fix as the rent to be paid by the tenant the rent which, in their opinion, would be an equitable rent for the holding between the landlord and the tenant as a willing lessor and a willing lessee: Provided that they shall allow no rent in respect of any improvements[10] made by or at the expense[11] of the tenant or any predecessor in title for which he or his predecessor, as the case may be, has not received payment or fair consideration from the landlord or his predecessor:

(9) Subject as aforesaid, the terms and conditions of the renewed tenancy shall (except so far as agreed to be varied) be those of the determining tenancy, in the same way and to the same effect, as nearly as may be, as if the tenancy had been continued for the full period of renewal under tacit relocation, and the tenant shall be entitled, if he so desires, to a renewal on those terms and conditions:[12]

(10) The Agricultural Holdings (Scotland) Acts, 1908 and 1910, 8 Edw. 7. c. 64.

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as applied by this section, shall be varied as follows (that is to say):—

1 Geo. 5. c. 30.

In the second Schedule to the Agricultural Holdings (Scotland) Act, 1908, the Land Court shall be substituted for the Board, and where in terms of that Schedule a person is nominated as arbiter by the Land Court his remuneration shall be paid by the Land Court: [13]

(11) In the event of the landlord on the renewal of the tenancy failing to provide such buildings as will enable the tenant to cultivate the holding according to the terms of the lease or agreement, or at any time failing to maintain the buildings and permanent improvements required for the cultivation and reasonable equipment of the holding, in so far as the tenant is not required at common law or by express agreement in writing to do so, it shall be lawful for the tenant to apply to the Land Court to so find and declare, and if the Land Court after hearing parties (if they desire to be heard) and after giving the landlord (if he so desires) an opportunity of remedying his failure as aforesaid shall so find and declare, the tenant shall, as from the date specified in the finding, become a landholder, and the definition of landholder in this Act shall include such tenant and his successors in the holding, being his heirs or legatees: [14]

(12) It shall be lawful for the Board [15] to provide model forms of agreements for optional use by landlords and tenants under this section, provided that nothing herein contained shall make the use of any such form compulsory:

(13) In the event of any dispute arising as to whether a person is a statutory small tenant within the meaning of this Act, it shall be competent for the Land Court to determine such question summarily: [16]

(14) Sub-section four of section six, section twenty and section twenty-seven of the Act of 1886, section two of the Act of 1887 down to the word "summarily," and sub-section nineteen of section seven, sub-section four of section eight, section twelve, section twenty-five, and sub-section one of section twenty-six of this Act shall, with the substitution

of "statutory small tenant" for "landholder," and "equitable rent" for "fair rent," and with any other necessary modifications, apply for the purposes of this section as they apply for the purposes of the Landholders Acts.

(15) Without prejudice to any agreement between the parties,[17] the Land Court may, on the application of the landlord, and upon being satisfied that he desires to resume the holding or part thereof for building, planting, feuing, or some other reasonable purpose having relation to the good of the holding or the estate (including any purpose specified in section nineteen of this Act), authorise the resumption thereof by the landlord,[18] subject to the payment of the like compensation to the tenant in respect of improvements on or in connection with the land resumed, to which a tenant would be entitled under the Agricultural Holdings (Scotland) Act, 1908, on the determination of his tenancy, and in addition, where part only of the holding is resumed, to such reduction of rent as may be agreed between the parties, or, in case of dispute, determined by the Land Court.

1. See Introduction, p. 34 ; Sec. 2 (iii.) (*b*) ; Sec. 26 (11), *supra*.
2. The statutory small tenant in these matters will simply be in the same place as a tenant under an ordinary agricultural tenancy, except that legatees are restricted to one person, being a member of the same family, *i.e.*, wife, or any person who, failing nearer heirs, would succeed in case of intestacy. But the definition in this sub-section results in practical fixity of tenure to the tenant, his heirs, legatees and assignees subject as stated.
3. Sec. 2 (1), and Note 5, Sec. 10, *infra*.
4. See Introduction, p. 35.
5. A reasonable objection might be raised on various grounds, *e.g.* the disreputable character, insufficiency of capital, bad farming, &c., &c. of the tenant. In spirit this is similar to Section 10 of the Agricultural Holdings (Scotland) Act, 1908, which provides that where a landlord without good and sufficient cause, and for reasons inconsistent with good estate management, terminates a tenancy or refuses to grant a new lease, &c., he shall pay certain compensation to the tenant. In the case of the statutory small tenant he is entitled to a renewal of the tenancy, and, notwithstanding the provision of sub-section 3, it is thought he cannot be allowed to exercise the option of quitting and claiming compensation for disturbance. The landlord can only turn him away with approval of the Land Court ; consequently no claim for compensation for disturbance can emerge. It should be

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noted that the grounds of objection are not limited to those applicable to crofters (now landholders). (See Forms, Appendix VI.)

Questions will arise whether this sub-section is not confined to conditions existing at the termination of a tenancy. If it is, then during the tenancy the landlord may get rid of the tenant for various reasons such as apply to ordinary tenants, without leave of the Land Court.

Although it is not quite clear, it is thought that no application for a renewal or for fixing equitable rent can be made unless either landlord or tenant has given the notice required under Section 18 Agricultural Holdings (Scotland) Act, 1908, failing which the tenancy would be renewed by tacit relocation. There is difficulty in working this sub-section and sub-section 5, from the absence of any provision requiring the tenant within a specified time before termination of tenancy to announce whether he is to stay or go. His notice of intention to terminate tenancy might only be given to enable him to apply for a renewal, &c., and apparently notwithstanding such notice whether by him or by landlord, he may at any time before termination of tenancy apply for renewal and to have an equitable rent fixed. Thus the landlord may have the holding thrown on his hands at a day's notice. Perhaps a way out of this dilemma may be found by the landlord, after giving or receiving notice of intention to terminate tenancy, requesting the tenant to say within a reasonable time whether he intends to stay on. If the tenant should refuse to reply the landlord might raise the failure up as a "reasonable objection," because, in the absence of a decision by the tenant within a reasonable period before termination of tenancy, he could not very well do anything else than arrange to let the holding to another tenant. The section requires amendment.

6. It is difficult to recognize any distinction between a "fair rent" and an "equitable rent." Under Section 11, Act 1886, reasonable terms are defined as "such terms as are usually obtained in the letting of land of like quality and similarly situated in the same district for other purposes than that of a deer forest, or a grouse moor or other sporting purpose." For the definition of "equitable rent" see sub-sec. (8), *infra*.

7. The period would naturally be that usual for letting small farms, and the period of the expiring tenancy might be a guide.

8. It is of course quite practicable for the Land Court in all cases to act on their own knowledge and experience however inadequate that might be, but it is not likely they will so act unless they feel fully informed with regard to the particular case before them. They will probably in many instances obtain a report from a local agricultural expert of repute. There is nothing agriculturists attach more importance to in such matters than ripe experience and knowledge of local conditions. Obviously no five men can be expected to possess such qualifications with reference to every corner of the country and the various departments of agricultural practice.

9. This resembles provision in Sec. 6 (1), Act 1886.

10. A question may be raised whether this is confined to improvements as

specified in the Agricultural Holdings (Scotland) Act, 1908. It is thought that other improvements are comprehended.

11. If these improvements were executed in terms of a contract of tenancy it is thought that the conditions of that contract in favour of the tenant would be held to include fair consideration from the landlord, because the conditions on each side in a bi-lateral contract are held to balance each other. They are one bargain.

12. Apparently all the Land Court can do is to fix rent and period. The parties may agree on other conditions, but failing agreement the previous conditions are to apply to the new tenancy.

13. In short the Land Court and not the Board of Agriculture and Fisheries has the duty to appoint an arbiter for the purposes of this section. For the Schedule see Appendix III.

14. This raises some questions of difficulty. The sub-section is capable of misconstruction and of being used oppressively. It is to be hoped the Land Court will act with moderation in the exercise of their delicate powers otherwise appeals to the Court of Session will be frequent.

Unless it is expressly arranged otherwise, the proprietor is bound to put the buildings on the farm at entry into tenantable repair (*Buchanan* v. *Stark*, 1776, 5 B.S. 515) so as to make them last with ordinary care during the period of the lease (*Mossman* v. *Brocket*, 1810, Hume, 850; *Barclay* v. *Nelson*, 1878, 5 R. 909; *Burrell* v. *Gebbie*, 1868, 6 S.L.R. 187). Thereafter, unless otherwise provided, the tenant must maintain the buildings in tenantable repair (*Campbell* v. *Brown*, 1776, 5 B.S. 518), and he is liable in damages for failure (*Munro* v. *Fraser*, 1858, 21 D. 103). The tenant's obligation does not, however, generally extend to ordinary tear and wear or natural decay (*M'Donald* v. *Robertson's Trustees*, 1830, 8 S. 974; *Mansfield* v. *Caird*, 1884, 21 S.L.R. 720; *Napier* v. *Ferrier*, 1847, 9 D. 1354), nor to damages by a cause for which he was not responsible and could not control, such as extraordinary hurricane, snowstorm or accidental fire (*York Buildings* v. *Adams*, 1741, M. 10,127; *Clark* v. *Baird*, 1741, M. 10,628). See further, Appendix II. to the author's work on the Agricultural Holdings (Scotland) Act, 1908, &c. It would appear to be advisable for all landlords who wish to keep holdings on statutory small tenancy to make sure at the beginning of a tenancy that suitable buildings and permanent improvements are provided and that the tenant expressly accepts them as such. Thus the rent would be fixed taking into account the expenditure. If that were done, it would be very hard indeed if the tenant were to be allowed to make additional demands during the lease and before the landlord could get any return for his expenditure in the shape of increased rent. If the Land Court decide anything under this subsection there may be an appeal by stated case to the Court of Session, but only on a question of law,—Sec. 25 (2), *supra*.

15. Why not the Land Court?

16. It is not clear whether there could be a stated case here. See subsec. (3), Sec. 33, *infra*.

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17. Evidently the landlord can resume the whole or part by agreement with the tenant, but this must be for one or other of the purposes stated. Here sub-sec. 3, *supra*, must be kept in view.

18. Resumption even though it be opposed by the tenant.

Register of small holdings.

33.—(1) It shall be the duty of the Board to compile and from time to time to revise a register of small holdings (whether held by landholders or statutory small tenants or not) throughout Scotland, in such form and containing such particulars as may be approved by the Secretary for Scotland.

8 Edw. 7. c. 64.

(2) For the purposes of this section the expression "small holding" means any holding within the meaning of the Agricultural Holdings (Scotland) Act, 1908, which either does not exceed fifty acres, or if exceeding fifty acres, is of an annual value as entered in the valuation roll not exceeding fifty pounds.

(3) Where a landlord and a tenant agree, or the Land Court decide, that the tenant is a landholder or a statutory small tenant, as the case may be, within the meaning of this Act, it shall be the duty of such landlord and tenant and of the Land Court to communicate such agreement or decision to the Board for the purposes of the small holdings register: Provided that a person shall not be held a landholder or a statutory small tenant by reason only that he is entered as such on the small holdings register.

Act to apply to Crown land.

34. This Act shall apply to lands vested in His Majesty in right of the Crown, and under the management of the Commissioners of Woods to such extent as the Commissioners of Woods may agree, but shall not apply to lands which are held by or on behalf of the Admiralty, War Office, or any other Government Department, or which under statutory powers have been acquired, or subjected to servitudes or restrictions for the purposes of the Naval or Military Forces of the Crown.

Voluntary agreements.

35. Nothing in this Act contained shall prejudice or in any way affect the right of any owner of land at any time after the commencement of this Act, to constitute and equip a small holding, as defined in the section of this Act providing for a register of small holdings, and to let such holding to any person at such rent, for such period, and on such terms and conditions as may be agreed on between them, and none of the provisions of this Act shall, except

by the joint consent of such owner and such person, apply to such holding. :[1] Provided that, as regards land comprised in a scheme referred to in an intimation to a landlord made in terms of sub-section (9) of section seven of this Act, the said right shall not, while such scheme is under consideration, be exercised without the consent of the Land Court.

1. This is just expressing what follows from the provisions of Section 2.

Short title and construction.

36. This Act may be cited as the Small Landholders (Scotland) Act, 1911, and shall be read and construed with the Crofters Acts, and the Crofters Acts and this Act may be cited as the Small Landholders (Scotland) Acts, 1886 to 1911.

Extent of Act.

37. This Act shall extend to Scotland only.

Commencement of Act.

38. This Act shall commence on the first day of April nineteen hundred and twelve.

Repeal.

39. The Acts specified in the second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule: Provided that such repeal so far as relating to lighthouses shall not operate so as to preclude the Board from maintaining or from defraying the expense of maintaining any lighthouse at the passing of this Act maintained by or at the expense of the Congested Districts (Scotland) Commissioners, unless and until the expense of such maintenance is by arrangement with the Board (which the Board are hereby empowered to enter into on such terms as may be agreed) undertaken by some other authority.

SCHEDULES.

FIRST SCHEDULE.

The Acts specified in Part II. of the First Schedule to the Board of Agriculture Act, 1889,[1] and any enactment amending or extending the same.

The Sale of Food and Drugs Acts, 1875 to 1907.

The Destructive Insects and Pests Acts, 1877 and 1907.

The Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

The Merchandize Marks (Prosecutions) Act, 1894.

The Light Railways Act, 1896.

The Fertilizers and Feeding Stuffs Act, 1906.

The Agricultural Holdings (Scotland) Acts, 1908 and 1910.

The Housing and Town Planning Act, 1909.

The Development and Road Improvement Funds Acts, 1909 and 1910.

1. See Appendix IV.

SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
49 & 50 Vict. c. 29.	Crofters' Holdings (Scotland) Act, 1886.	In section two, the words "for fishermen" and "connected with the fishing industry." In section three, the words "shall forfeit his tenancy and." Section four. In sub-section three of section six, the words "at the next payment of rent." In section eleven, the words "five or more," the words "to the Crofters Commission," and the word "crofting" wherever that word occurs. In section twelve, the word "crofting." Sub-section (1), sub-section (2), paragraphs (*a*), (*b*), (*c*) and (*d*) of sub-section (3), and sub-sections (4) and (5) of section thirteen. In section fourteen, the words "for the purposes of a deer forest, or of a grouse moor, or for other sporting purposes." Section seventeen. Section nineteen, from the beginning thereof to the word "aforesaid," and from "who" to "Act." Section twenty-two. Section twenty-three. Section twenty-four, from "and it" to end of section. Section twenty-eight. In section thirty-two, the words "in all or any of the counties to which this Act applies and." In section thirty-four, from "'crofter' means" to "in money at the commencement of this Act"; and from "'holding' means" to "appurtenant to a house."
50 & 51 Vict. c. 24.	Crofters' Holdings (Scotland) Act, 1887.	In section two, the words from "within" to "after the passing of this Act," and from "and they" to "case."

Session and Chapter.	Short Title.	Extent of Repeal.
51 & 52 Vict. c. 63.	Crofters' Commission (Delegation of Powers) Act, 1888.	The whole Act.
54 & 55 Vict. c. 41.	Crofters' Common Grazings Regulation Act, 1891.	In section two, the words "in any township or townships situated in a crofting parish or parishes within the meaning of the principal Act"; and the words "of the township."
59 & 60 Vict. c. 37.	Agricultural Rates, Congested Districts and Burgh Land Tax Relief (Scotland) Act, 1896.	In sub-section two of section four, the words "for the improvement of congested districts in the Highlands and Islands of Scotland."
60 & 61 Vict. c. 53.	Congested Districts (Scotland) Act, 1897.	Section one. Section two. Sub-sections (1) and (2) of section three. In sub-section (1) (*d*) of section four, the words "from congested districts to other districts in Scotland." In sub-section (1)(*f*) of section four, the word "lighthouses." Section eight.

Crofters Holdings (Scotland) Act, 1886.

49 & 50 Vict. Ch. 29.

ARRANGEMENT OF SECTIONS.

I.—*Security of Tenure.*

Section

1. A crofter shall not be removed except for breach of statutory conditions.
2. Provision for resumption by landlord.
3. Removal of crofter for breach of conditions.

II.—*Rent.*

4. Present rent.
5. Rent altered by agreement.
6. Fixed rent.

III.—*Renunciation of Tenancy.*

7. Renunciation of tenancy.

IV.—*Compensation for Improvements.*

8. Compensation to crofter for improvements on removal.
9. Compensation to cottar for improvements on removal.
10. Principle of valuation.

V.—*Enlargement of Holdings.*

11. Application by crofters for enlargement.
12. Intimation to landlords.
13. Available land.
14. Deduction from rent in case of lands held for sporting purposes.
15. Assigned land.
16. Bequest of holding.

VI.—*Crofters Commission.*

Section
17. Appointment of three Commissioners.
18. Commission to make report of their proceedings.
19. Area covered by the Act.
20. Procedure in fixing fair rent.
21. Procedure in enlarging holdings.
22. Duration of powers as to enlargement of holdings.
23. Delegation of Commissioners' duties.
24. Taking evidence and expenses before Crofters Commission.
25. Finality of Commissioners' decision.
26. Use of sheriff court houses.
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SCHEDULE.

Chapter 29.

An Act to amend the Law relating to the Tenure of Land by Crofters in the Highlands and Islands of Scotland, and for other purposes relating thereto.[1]—[25*th June* 1886.] A.D. 1886.

WHEREAS it is expedient to amend the law relating to the tenure of land by crofters in the Highlands and Islands of Scotland:

Be it enacted, &c., as follows:

1. Section 1 of the Small Landholders (Scotland) Act, 1911 enacts that "from and after its commencement" (1st April 1912), and "subject to its provisions," the Crofters Acts shall be read and construed as if the expression "landholder" were substituted for the expression "crofter" occurring therein, and shall have effect throughout Scotland (see notes to that Section). In many other respects these Acts are amended by the Small Landholders (Scotland) Act. Accordingly, throughout the annotated copy of the Crofters Acts as printed in this work, "landholder" is substituted for "crofter"; "holding" for "croft"; "Land Court" for "Sheriff" and for "Crofters Commission and Crofters Commissioners" (except in Section 11, Act 1886, where "Board of Agriculture for Scotland" is substituted for Crofters Commission).

I.—*Security of Tenure.*

Sec. 1.

A landholder shall not be removed except for breach of statutory conditions.

1.—A landholder[1] shall not be removed[2] from the holding[3] of which he is tenant except in consequence of the breach of one or more of the conditions following (in this Act referred to as statutory conditions),[4] but he shall have no power to assign his tenancy.[5]

(1) The landholder shall pay his rent[6] at the terms at which it is due and payable:[7]

(2) The landholder shall not execute any deed purporting to assign his tenancy:[5]

(3) The landholder shall not, to the prejudice of the interest of the landlord, persistently injure the holding by the dilapidation of buildings or, after notice has been given by the landlord to

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the landholder not to commit, or to desist from, the particular injury specified in such notice, by the deterioration of the soil: [8]

(4) The landholder shall not, without the consent of his landlord in writing, subdivide his holding or sublet the same or any part thereof, or erect or suffer to be erected thereon any dwelling-house otherwise than in substitution for those already upon the holding at the time of the passing of this Act: [9]

(5) The landholder shall not persistently violate any written condition signed by him for the protection of the interest of the landlord or of neighbouring landholders which is legally applicable to the holding, and which the Land Court shall find to be reasonable: [10]

19 & 20 Vict. c. 79. 43 & 44 Vict. c. 34.

(6) The landholder shall not do any act whereby he becomes notour bankrupt within the meaning of the Bankruptcy (Scotland) Act, 1856, and the Debtors (Scotland) Act, 1880, and shall not execute a trust deed for behoof of creditors: [11]

(7) The landlord or any person or persons authorised by him in that behalf (he or they making reasonable compensation for any damage to be done or occasioned thereby), shall have the right to enter upon the holding for any of the purposes following (that is to say):

Mining or taking minerals, or digging or searching for minerals;

Quarrying or taking stone, marble, gravel, sand, clay, slate, or other workable mineral;

Cutting or taking timber or peats,[12] excepting timber and other trees planted by the landholder or his predecessors in the holding, being of the same family, or that may be necessary for ornament or shelter, and excepting also such peats as may be required for the use of the holding; [12]

Opening or making roads, fences,[13] drains, and watercourses;

Passing and repassing to and from the shore of the sea or any loch with or without horses and carriages for exercising any right of property or other right belonging to the landlord;

Viewing or examining at reasonable times the state of the holding and all buildings or improvements thereon;

Hunting, shooting, fishing, or taking game or fish, wild birds, or vermin. The word "game" for the purposes of this sub-section means deer, hares, rabbits, pheasants, partridges, quails, landrails, grouse, blackgame, capercailzie, ptarmigan, woodcock, snipe, wild duck, widgeon, and teal;[14]

And the landholder shall not obstruct the landlord, or any person or persons authorised by him in that behalf as aforesaid, in the exercise of any right reserved or conferred by this sub-section.[15]

(8) The landholder shall not on his holding, without the consent of his landlord, open any house for the sale of intoxicating liquors.

This section, with the exception of the substitution of "landholder" for "crofter" and "Land Court" for "Crofters Commission" remains intact, but some additional "statutory conditions" have been added by Sec. 10, Act 1911, viz. :—

(1) "The landholder shall, by himself or his family, with or without hired labour, cultivate his holding, without prejudice to the right (which is hereby conferred upon him) to make such use thereof for subsidiary or auxiliary occupations as in case of dispute the Land Court may find to be reasonable and not inconsistent with the cultivation of the holding; provided that the expression "cultivate" in this sub-section shall include the use of a holding for horticulture or for any purpose of husbandry, inclusive of the keeping of or breeding of live stock, poultry or bees, and the growth of fruit, vegetables and the like";

(2) "The expression 'passing of this Act' in sub-section 4 of Section 1 of the Act of 1886 shall, in the application of sub-section to landholders, other than existing crofters and the statutory successors of existing crofters, be construed as meaning the date at which the Landholders Acts first applied to the holding: Provided always that nothing in said sub-section shall be construed as debarring a landholder from sub-letting his house to holiday visitors; and provided further that the provision as to dwelling-houses in said sub-section shall not apply to a new holder, but a new holder and his statutory successors shall not, without the consent in writing of the landlord and the Board, erect or suffer to be erected on the holding more than one dwelling-house."

A landholder may also be removed from his holding "as if he had broken a statutory condition" where he commits a breach of the conditions of repayment of any loan granted by the Board under Sec. 7, Act 1911 (Sec. 8 (2), Act 1911).

1. For definition of "landholder" see Sec. 2, Act 1911, and Introduction, p. 3. It will be seen that "landholder" is much wider than "crofter" as defined in Section 34, *infra*. It comprehends not only all who were crofters at the commencement of the Act of 1911, but also all tenants from year to year, and all leaseholders (where the

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buildings were mostly provided by the tenants without consideration or compensation) from the expiry of the leases, and all new holders constituted by registration from the date of registration. The holding may be located anywhere in Scotland and may extend in rental to £50 (£30 in Lewis) without limit or area, or in area to 50 acres (30 in Lewis), exclusive of common pasturage or grazing, without limit of rent. A landholder not being a landlord, is not entitled to call on an adjacent landlord to join in meeting the expense of a march fence (*Macdonald* v. *Dalgleish*, 1894, 21 R. 900); nor is he entitled, without the landlord's consent, to erect buildings not designed for agricultural or pastoral purposes (*Gilmour* v. *Peterson*, 1901, 3 F. 569; 38 S.L.R. 384). It will be kept in view that as above stated, "cultivate" includes the use of the holding for horticulture and other purposes. Necessary buildings for such purposes would therefore doubtless be allowed.

2. This of course also applies to the additional statutory conditions above referred to (p. 115).

3. See definition Section 34 and Introduction, p. 4.

4. See above (p. 115) for additional statutory conditions. It may be noted that it has been very freely held that many of the irritancies arising from breach of statutory conditions can be purged at the bar, see note 8, *infra*.

5. Right to assign to a member of the landholder's family, being his wife, or any person who, failing nearer heirs, would succeed him in case of intestacy, may now be granted by the Land Court where the landholder is unable to work the holding from illness, old age, or infirmity (Sec. 21, Act 1911). It was held that a crofter, not having right to assign, could not pass right to his holding to his trustee in a cessio, even under a disposition *omnium bonorum* (*Mackenzie* v. *Munro*, 10 Mar. 1894, 22 R. 45).

6. See Sec. 4, *infra*, and Sec. 13, Act 1911, which is substituted therefor. It is also necessary to refer to Section 3, *infra*, which evidently qualifies this sub-section. Merely being in arrear, though it would warrant proceedings to recover payment, would not justify an action of removal. Before removal can be sought at least one year's rent must be in arrear.

7. The amending Act of 1887, Section 2, which authorises a stay of legal proceedings for payment of rent, qualifies this sub-section.

8. The provisions of Section 23, The Agricultural Holdings (Scotland) Act, 1908, regarding freedom of cropping and sale of produce appear to apply to holdings under the Landholders Acts. But it may be a question whether the landholder has not greater freedom than the ordinary tenant. Under this sub-section he can apparently cultivate and sell as he may think proper, and the landlord requires to give notice apparently in writing to desist from some particular course which has resulted in deterioration of the soil. Only on failure thereafter to desist can the landlord ask for removal. A notice requiring the landholder to discontinue the deterioration of the soil would not be sufficient. It would require to point out some

particular and objectionable course which had been followed and had resulted in deterioration, with a request to desist. The word "persistently" suggests repeated offences. It has been held that the keeping of an insufficient stock does not necessarily infer deterioration of the soil, and that in the circumstances, a sufficient stock having been put on before decree, the irritancy under Section 1 (3) had been purged (*Stewart's Endowment Trs.* v. *Meil*, 1891, 7 S.C.R. 217). The Crofters Commission also held that one departure from rotation had not deteriorated the soil, and that selling straw was counterbalanced by a return of bought dung and artificial manures (*Munro Ferguson* v. *Jas. Chisholme*, C.C. Report 1907-8, p. xiv.). Persistent dilapidation of buildings has been held not to infer an irritancy in the absence of a notice from the landlord calling for repairs (*Sharp* v. *Mackay*, 1897, 13 S.C.R. 365).

9. A person who sub-let was allowed to purge the irritancy at the bar by producing a renunciation by the sub-tenant (*Lochnell* v. *MacDougall*, 20 S.C.R. 241). The following were held not to infer sub-let or sub-division—(*a*) Where an old man allowed his married son and his family to occupy a barn on the croft, near his own dwelling, the son working the croft without wages or profit to himself (*Matheson* v. *M'Leod*, 1909, 26 S.C.R. 209; (*b*) letting of grazing of the arable and hill land of a croft (*Stewart* v. *M'Tavish*, 1906, 23 S.C.R. p. 116); (*c*) prior to passing of this Act, arranging with a farm servant that he should occupy a cot and a portion of the ground in return for his services, and continuing this arrangement after the Act came into operation (*Lord Abinger* v. *Cameron*, 1888, 15 R. 598; 25 S.L.R. 396); (*d*) permitting outsiders to reap crops on the croft (*Irvine* v. *Henderson*, 1892, 8 S.C.R. 263). See note (2) p. 115, *supra*, and Sec. 10, Act 1911, as to circumstances in which more than one dwelling may be permitted to be erected, and as to the right of the landholder to let house to holiday visitors.

10. The word "persistently" again occurs. The safe course is for the landlord to give the landholder written notice and warning that if he persists the landlord will take steps for removal. Before, however, taking these steps the terms of the condition and all the facts ought to be placed before the Land Court, so that they may approve of the condition as being reasonable. See Form, Appendix VI.

11. See Section 3, Act 1887, under which the landholder is not to be held notour bankrupt on a decree obtained in an action for recovery of rent pending the disposal by the Land Court of an application to have fair rent fixed. A crofter was notour bankrupt at the date of an action for his removal. He, however, compounded with his creditors before decree, and it was held he had thereby purged the irritancy (*Duke of Argyll* v. *M'Callum*, 1889, 5 S.C.R. 259). In a similar case where only the debt on which notour bankruptcy followed was settled, it was held that the irritancy was not purged (*Hay* v. *Sinclair*, 1892, 8 S.C.R. 241). A trustee in bankruptcy has no right to call on the crofter to renounce the tenancy (*Mackenzie's Tr.* v. *Mackenzie*, 1905, 7 F. 505; 42 S.L.R. 376). The ground of that decision was that by the bankruptcy the tenancy was

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forfeited, but it should be observed that the words "shall forfeit his tenancy" are now deleted from Section 3 (See Sched., Act 1911). The Crofters' Commission say, "We have always held we have no power to sist proceedings for removal unless the same are taken in respect of non-payment of rent." They declined to do so where removal was asked when proceedings were grounded on notour bankruptcy (C.C. Report, 1903-4, p. xiii.).

12. A landholder has right to cut peats, but it is for the landlord to point out where they are to be taken from, where the Commission have not intervened (*Parr* v. *Maclean*, 1889, 16 R. 810; 26 S.L.R. 586). The Crofters Commission referred to this decision and assented to it, adding, "The decision in the case *Parr* v. *Maclean* does not, however, interfere with our powers under Section 12 to draw up a scheme regulating the use by crofters of peat mosses on the same estate for the reasonable purposes of their holdings (C.C. Report, 1906-7, p. xx.). On the following page (xxi.) it is stated they drew up a scheme in another case for regulating the use of rushes and grass for thatching purposes. The Crofters Commission have on several occasions contented themselves with expressing opinions, without actually issuing orders regarding peat cutting operations and quarrying (see C.C. Report, 1907-8, pp. xi., xii.). In other cases they have appointed Committees to manage peat mosses, and approved and issued rules and regulations for their guidance (C.C. Report, 1907-8, xxiii.).

13. See note 1, p. 116, *supra*, and *Macdonald* v. *Dalgleish*, 1894, 21 R. 900.

14. See Sec. 10 (3), Act 1911, as to landholder's right to compensation for damage by game.

15. The landlord has also other rights, including right to use water springs rising on holdings (Sec. 12, Act 1911), and the landholder must respect these rights, though his failure to do so would not entitle the landlord to have him removed.

Provision for resumption by landlord.

2.—Nothwithstanding the provisions contained in the preceding section the Land Court may, on the application of the landlord, and upon being satisfied that he desires to resume the holding or part thereof, for some reasonable purpose,[1] having relation to the good of the holding or of the estate, including the using, letting, or feuing the land proposed to be resumed, for the building of dwellings, or for small allotments [*for fishermen* *] or for harbours, piers, boat shelters, or other buildings [*connected with the fishing industry* *] or for churches or other places of religious worship, or for schools, or for planting, or for roads practicable for carriages from the holding or holdings to the high road or the sea shore, authorise the resumption thereof by the landlord upon such terms and conditions as the Land Court shall think fit, and may require

* Words in italics repealed.

the landholder to surrender his holding, in whole or in such part, to the landlord, upon the landlord making adequate compensation to the landholder, either by letting to him other land of equivalent value[2] in the neighbourhood, or by reduction of rent, or by compensation in money, or otherwise as the Land Court shall determine.[3]

1. The only amendments to this section are as indicated in italics, but under Sec. 19, Act 1911, "the feuing of land, or the occupation by a landlord for the purpose of personally residing thereon of a holding, being his own landed estate, or the protection of an ancient monument or other object of historical or archæological interest from destruction or injury," are declared to be reasonable purposes within the meaning of this section. For these purposes then the landlord is apparently entitled to insist on resumption, the Land Court having only the power to impose "terms and conditions as they shall think fit." This amendment is really only giving effect to the course followed by the Commissioners in the case *Slater* v. *Esslemont*, 1888 (Report of Crofters Commission, 1888, p. 177). There, authority to resume was granted and a remit made to two men to inspect the holding, including land, dwelling-house and other buildings, and to furnish a report in detail in regard to these, including therein a statement of the nature, extent, and present condition of the reclamations and other permanent improvements (if any) made by the crofter, having regard to the Schedule annexed to the Act, and with a view to enabling the Commissioners to fix the compensation to be made to the crofter, and to adjust the terms and conditions, as to away-going and otherwise, upon which the surrender is to be made. The Commissioners have authorised resumption for many purposes, such as for the erection of a dwelling-house and shop, erecting a dyke at back of a dwelling-house, enlarging a churchyard, for herring-curing station (C.C. Report, 1907-8, p. xxxii.), for forming a light railway, for planting, for protection of, and for improving access to mansion house, for marble quarries, &c." Notice to treat from a railway company for the construction o a railway, furnished landlord with a reasonable purpose, the crofter having no locus to object to the transaction (*Macmillan* v. *Cameron and Others*, 1897, 5 S.L.T. 120).
2. Not necessarily of equivalent value per acre.
3. In the case of resumption the rights of parties shall, in event of dispute, be adjusted by order of the Land Court on application of any party interested (Sec. 14, Act 1911). In the case where part only of a holding is resumed there must of course be a corresponding reduction of rent, but that is not "compensation" in its popular sense; it is merely striking off that part of the rent which corresponds to the land taken and for which of course no rent could be exacted. But the taking of the part may in some instances reduce the profit-earning capacity of what is left. This the Land Court must of course take nto account. It may be questioned whether they are entitled to

Sec. 2.

allow for loss and trouble attending the removal of the crofter from part or the whole of his holding. They are evidently not limited to compensation for improvements under this Act and the Agricultural Holdings (Scotland) Act, 1908. Section 10 of that Act requires a landlord to pay certain compensation (over and above that for improvements) where the tenancy has been terminated by him without good and sufficient cause. The landlord in resuming under this Act has the sanction of the Land Court, and his act cannot be said to be without good and sufficient cause. It will be noted that under Sec. 17, Act 1911, the landlord is to obtain no compensation from the Board where he resumes.

Removal of landholder for breach of conditions.

46 & 47 Vict. c. 62.

3.—When one year's rent[1] of the holding, but less than two years' rent, is due and unpaid, the landholder shall be liable to be removed in manner provided by section twenty-seven of the Agricultural Holdings (Scotland) Act, 1883.[2]

When two years' rent of the holding is due and unpaid,[2] or when the landholder has broken any other of the statutory conditions,[3] he [*shall forfeit his tenancy, and* *] shall be liable to be removed in manner provided by the fourth section of the Act of Sederunt anent removing of the fourteenth day of December one thousand seven hundred and fifty-six.[4]

1. See definition in Sec. 4, *infra*, as amended by Sec. 13, Act 1911.
2. This Act is repealed by the Agricultural Holdings (Scotland) Act, 1908, which takes its place. Section 17 of the latter Act, which corresponds to Section 27 of the former, reads thus—
   "(1) When six months' rent of the holding is due and unpaid it shall be lawful for the landlord to raise an action of removing before the Sheriff against the tenant for his removal from the holding at the term of Whitsunday or Martinmas next ensuing after the action is brought, and unless the arrears of rent then due are paid or caution is found to the satisfaction of the Sheriff for the same, and for one year's rent further, the Sheriff may decern the tenant to remove, and eject him at such term in the same manner as if the lease were determined, and the tenant had been legally warned to remove.
   "(2) A tenant so removed shall have the rights of an outgoing tenant to which he would have been entitled if his lease had naturally expired at such term of Whitsunday or Martinmas."
3. See Section 1, *supra*, and notes thereto.
4. The fourth Section of the Act of Sederunt reads thus,—"Where a tenant has irritated his tack by suffering two years' rent to be in arrear, it shall be lawful to the setter or heritor to declare the

* Words in italics repealed.

irritancy before the Judge Ordinary, and to insist in a summary removing before him. And it shall be lawful to the Sheriff or Steward-depute or their substitutes to find the irritancy incurred, and to decern in the removing, any practice to the contrary notwithstanding."

Apparently it is incompetent to have an action for *summary* removal under this Section (*Mackenzie* v. *Munro*, 11 July 1894, 2 S.L.T. 175).

II.—*Rent.*

Present rent.

4.—[*The rent payable, as one of the statutory conditions, shall be the present rent, that is to say, the yearly rent including money and any prestations other than money, payable for the year current at the passing of this Act, unless and until the present rent is altered in manner provided by this Act.**]

Section 13 of the Act of 1911 is substituted for the above section and reads thus—"The rent payable by a landholder as one of the statutory conditions shall be the present rent, that is to say, the yearly rent, including money and any prestations other than money,—

"(*a*) In the case of existing crofters, payable for the year current at the passing of the Act of 1886, or, where the rent so payable has been altered in terms of that Act, payable for the year current at the commencement of this Act;

"(*b*) In the case of existing yearly tenants, payable for the year current at the commencement of this Act; and

"(*c*) In the case of qualified leaseholders or statutory small tenants becoming landholders, and in the case of the new holders, and in the case of landholders whose holdings are enlarged, payable or fixed in respect of the last year of the lease, or at the date of registration, or at the date of enlargement, as the case may be:

in each case unless and until the present rent is altered in manner provided by the Landholders Acts."

A special case in the Court of Session as to the amount of rent payable by certain crofters was dismissed on the ground that the value of the cause was under £25, Section 63 of the Court of Session Act, 1868, not extending the jurisdiction of that Court so as to enable it to decide in a special case questions not otherwise competent to it (*Bruce*, 20 Dec. 1889, 17 R. 276).

Rent altered by agreement.

5.—The rent may be altered by agreement between the landlord and the landholder to such amount and for such period as may be agreed on; and the rent so agreed on shall be the rent payable by the landholder so long as such agreement subsists, and after

* Repealed,—see Schedule, Act 1911.

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the expiry thereof so long as no different rent shall have been fixed by the Land Court upon the application of the landlord or the landholder and so long as no new agreement between the landlord and the landholder shall have been made.[1]

1. See also Sec. 6 (2). It seems to be the intention that, so far at all events as rent is concerned, the parties shall have a perfectly free hand, at any time, to make whatever arrangement they may think proper. The rent thus mutually agreed on is to remain unaltered till the expiry of the period to which the parties agreed it should apply. The Land Court cannot interfere to raise or reduce it till the expiry of that period. The Commissioners have fixed fair rents in cases in which it was contended by one of the parties and denied by the other that an agreement had been entered into for a certain period. The fact that the Commissioners so acted implies that they held there was no period agreed on by both parties. It will be possible under Sec. 25, Act 1911, to appeal by way of special case to the Court of Session against any finding of the Land Court involving a question of law or of mixed law and fact.

Fixed rent.

6.—(1) The landlord or the landholder may apply to the Land Court to fix the fair rent to be paid by such landholder to the landlord for the holding, and thereupon the Land Court after hearing the parties[1] and considering all the circumstances of the case, holding, and district, and particularly after taking into consideration any permanent or unexhausted improvements on the holding and suitable thereto which have been executed or paid for by the landholder or his predecessors in the same family, may determine what is such fair rent, and pronounce an order accordingly.[2]

(2) The rent fixed by the Land Court (in this Act referred to as the fixed rent) shall be deemed to be the rent payable by the landholder as from the first term of Whitsunday or Martinmas next succeeding the decision of the Land Court, and shall come in place of the present rent,[3] and, save by mutual agreement, the fixed rent shall not be altered for a period of seven years from such term.[4]

(3) Where the Land Court shall fix a rent which shall be less in amount than the present rent, the landholder shall be entitled, [*at the next payment of rent*,*] to deduct from the amount of the fixed rent such sum or sums as he may have paid over and above the amount of the fixed rent in respect of the period between the date of the notice of application to fix the fair rent and[5] the date when such rent was fixed.[6]

* Words in italics repealed.

(4) When an application is lodged with the Land Court to fix a fair rent, it shall be in the power of the Land Court either under the same or under another application of the landholder, to sist all proceedings for the removal of the landholder in respect of non-payment of rent till the said application is finally determined, upon such terms as to payment of rent or otherwise as they shall think fit.[7]

(5) In the proceedings on such application the Land Court shall take an account of the amount of arrears of rent due or to become due before the application is finally determined, and may take evidence of all the circumstances which have led to such arrears, and shall decide whether, in view of such circumstances, the whole or what part of such arrears ought to be paid, and whether in one payment or by instalments, and at what dates the same should be paid, and the amount and dates so fixed shall be deemed to be the total amount of such arrears due by the landholder and the terms at which the same become payable.[8]

1 Intimation of application must be made to landlord; independent knowledge on his part will not suffice (*Dalgleish* v. *Livingstone*, 1895, 22 R. 646; 32 S.L.R. 347). The application can only be made on expiry of agreement entered into under Section 5, *supra*, or under Section 7 (6), Act 1911. In the latter case it is expressly provided that the Land Court shall not interfere with the rent till the lapse of seven years from the term at which the rent was first payable. Suppose, however, the agreed period were for less than seven years? See note to that sub-section.

2. As to what is a "fair rent," see Introduction, p. 19. A rent cannot be fair which is not based on a just consideration of the rights of the landlord and tenant respectively. Accordingly the Land Court are required to consider all the circumstances of the case, holding and district (but not the relief granted under Section 6 of the Agricultural Rates, &c. Act, 1896). That is a general direction consistent with the terms of Section 12, *infra*, which directs that in assigning land for the enlargement of holdings the Land Court are to do so on such terms and conditions "as they consider just." It is safe to assume that this was intended to correspond with the definition of "reasonable terms" provided by section 11, viz., such terms as are usually obtained in the letting of land of like quality, similarly situated, in the same district "for other than sporting purposes." Here then you have got most of the elements which may be embraced under "all the circumstances of the case, holding and district." It is necessary, however, in fixing fair rent (except in cases of enlargement) to consider the tenant's rights and interests with regard to improvements. Therefore the Land Court is directed particularly to take into "considera-

Sec. 6.

tion any permanent or unexhausted improvements on the holding and suitable thereto which have been executed by the tenant or his predecessors in the same family." Clearly this comprehends improvements under the Schedule to this Act, and also under the Agricultural Holdings (Scotland) Act, 1908. If these improvements have not been taken over and paid for, either in cash or for valuable consideration, by the landlord of course no rent can be charged in respect of them. What is intended, though not expressly stated here, is expressed in Section 32 (8), Act 1911, with reference to the fixing of equitable rents for statutory small tenants thus—"Provided that they shall allow no rent in respect of any improvements made by or at the expense of the tenant or any predecessor in title for which he or his predecessor has not received payment or valuable consideration from the landlord or his predecessor." Under Section 8 (*c*), compensation is not to be paid for improvements embraced within the Schedule which have been executed in virtue of a specific agreement in writing. The Crofters Commission did not think they were necessarily bound to exclude consideration of improvements so executed when fixing a fair rent.—(1887, Report of Commission, p. 102.) At the same time it is impossible to get over the fact that, generally speaking, the considerations on each side of a bilateral contract are justly held to balance each other. On the other hand it may be open to the Land Court to argue in some cases that looking to the short interval between the execution of the improvements and the date of application for fixing a fair rent, the landholder cannot have had the contemplated use, free of rent, of the improvements looking to their nature as permanent or otherwise. "Predecessors in the same family."—See note 12 to Sec. 2, Act 1911.

3. See Section 5, and note thereto.

4. It is thought that a mutual agreement could be for a period beyond the seven years, and that the Land Court cannot be called in till the expiry of such agreement.—See Sec. 5, and note thereto.

5. Section 4, Act 1887, enacts that "Section 6 (3) of the principal Act shall be read and construed as if the words 'the first term of Whitsunday or Martinmas next following' were inserted between the words 'and' and 'the' in said sub-section."

6. This sub-section does not appear to run smoothly with sub-section 2. Under the latter, the fixed rent (fixed under the application) is to run from the first term of Whitsunday or Martinmas next succeeding the date when it is fixed by the Land Court. Under this sub-section (3) the intention evidently was to carry the reduction back to the date of application. It only provides, however, for doing so for the period from the date of the notice of application to the date when the rent was fixed. There may, therefore, be no reduction between the latter date and the term of Whitsunday or Martinmas from which under sub-section 2 the fixed rent is to run. With this qualification, the difference paid between the former (present) rent and the (new) fixed rent may be deducted at successive terms if

necessary (*Hebden* v. *Spence*, 1894, 10 S.C.R. 136). In *Davidson* v. *Mackenzie*, 17 S.C.R. 33, it was held that the right to deduct under this sub-section as amended by the Act of 1887 (note 5 above) extended no further than the next payment of rent after the decision fixing a fair rent, a limitation which has been removed by the deletion of the words "at the next payment of rent" (Schedule to Act 1911).

7. See Secs. 2 and 3, Act 1887, see p. 147, empowering the Land Court to prohibit the sale of a landholder's effects on a decision in an action for recovery of rent, pending the disposal of an application to have a fair rent fixed. The justification for giving the Land Court power to thus interfere with the usual course of the law mainly rests in their having power to deal with arrears.

8. This provision does not prevent the ordinary Courts from dealing with actions for payment of arrears (*Fraser* v. *Macdonald*, 9th Dec. 1886, 14 R. 181; *Stuart and Stuart* v. *Macleod*, 8th Dec. 1891, 19 R. 223). But the Land Court can stay diligence on the decree of any other Court so far as regards removal of the landholder or sale of his effects (Sec. 4, *supra*, and Act of 1887). The Crofter Commission in a case before them said: "We held that arrears arising due under the said agreement were in the same position as statutory fair rent arrears, and could not be competently dealt with by us." That was an agreement entered into under Section 5, and under it the rent was fixed at £6, and £5 6s. 6d. of arrears cancelled (C.C. Report 1905-6, p. xviii.).

III.—*Renunciation of Tenancy.*

Renunciation of tenancy.

7.—A landholder shall be entitled, upon one year's notice in writing to the landlord, to renounce[1] his tenancy as at any term of Whitsunday or Martinmas.[2]

1. See Introduction, p. 20.

2. Section 18, Act 1911, adds the following: "Provided that such notice shall not, without the consent of the Land Court, be effective unless, within two months from the date of notice, the landlord or the landholder intimates the same in writing to the Board, and provided further that except by agreement with the Board the landholder shall not without the like consent be entitled to renounce his tenancy so long as any liability owing by him to the Board is not wholly discharged."

Section 17, Act 1911, directs what must be done, and provides for compensation in certain events following on renunciation of tenancy.

Section 23, Act 1911, allows landlord to set off arrears of rent against tenant's claim for compensation under Section 8, *infra*.

Sec. 8.

IV.—*Compensation for Improvements.*

Compensation to landholder for improvements on removal.

8.—When a landholder renounces[1] his tenancy or is removed[2] from his holding, he shall be entitled to compensation for any permanent improvements,[3] provided that—

(*a*) The improvements are suitable to the holding;[4]

(*b*) The improvements have been executed or paid for by the landholder or his predecessors in the same family;[5]

(*c*) The improvements have not been executed in virtue of any specific agreement in writing under which the landholder was bound to execute such improvements.[6]

1. Sec. 7, *supra*, and Sec. 18, Act 1911.

2. Held that a claim for compensation under this section did not form part of the executry of a deceased crofter, but emerged only on renunciation or removal of the crofter in possession. *Macleod* v. *Macrae*, 1890, 6 S.C.R. 262; *Polson* v. *Stewart*, 20 S.C.R. 349. Sec. 3, *supra*.

3. Sec. 34, "permanent improvements" means the improvements specified in the Schedule to the Act. The right to compensation is transferred to the Land Court up to the amount of the landholders outstanding liability to the Board (Section 8 (1), Act 1911). The landlord can set off arrears of rent against any sum found due to the landholder or to the Board for improvements (Section 23, Act 1911).

4. Sec. 1 (4), *supra*, and Sec. 10 (2), Act 1911. What improvements may be suitable to a particular holding is very much a matter of opinion. The fact that buildings are needlessly large or extravagantly expensive would not necessarily result in their being held unsuitable to the holding. For example, a dwelling-house might be considered too large and expensive, but still it might be possible to use it for the purposes of the holding. In such a case it is thought the Land Court would not decline to allow compensation altogether, but would fix the amount (under reference to Section 10, *infra*) on a scale which might more appropriately have been followed in erecting the building. In extreme cases it is thought compensation would be entirely disallowed. See proviso at end of Section 9, which implies a right in the proprietor to prevent the erection of unnecessary or unsuitable buildings. It is doubtful if he could prevent the erection of suitable buildings, probably not.

5. See Sec. 2, Act 1911, and note 12 thereto. It rests with the claimant to prove that the improvements were so executed or paid for. The fact that the improvements have been executed by money borrowed or gifted under Section 7, Act 1911, does not prevent a claim being made therefor (see Section 8, Act 1911).

6. "Specific agreement in writing" evidently excludes obligations stated in general terms, *e.g.* an obligation to execute all improvements that might at any time be required on the holding. The Crofters

Commission in a case which came before them said: "In our view 'specific' agreement means an agreement specifying the improvements for which, when executed, the crofter is not to receive compensation. For any improvements not so specified the outgoing crofter is entitled to compensation under Sections 8 and 10 of the Act." Further, they said: "We are of opinion that the entry in the Estate Book does not constitute an 'agreement in writing.' As a rule 'agreement in writing' means a writing which of itself shows that the parties have agreed and what they have agreed to. It must therefore be signed by both parties or their representatives, as has been held in practice under the Agricultural Holdings (Scotland) Acts, 1883 to 1908. Further, the entry in the Estate Book was not stamped. It could not therefore receive effect as an agreement." (C.C. Report 1909-10, p. xxvi.)

Compensation to cottar for improvements on removal.

9.—When a cottar[1] if not paying rent is removed from his dwelling and any land or buildings occupied by him in connexion therewith,[2] or if paying rent renounces his tenancy or is removed,[3] he shall be entitled to compensation for any permanent improvements,[4] provided that—

(*a*) such improvements are suitable to the subjects;[5]

(*b*) such improvements shall have been executed or paid for by the cottar[1] or his predecessors in the same family;[6]

(*c*) such improvements have not been executed in virtue of any specific agreement in writing under which the cottar[1] was bound to execute such improvements.[7]

The provisions of the preceding section and of this section shall not apply to any buildings erected by a landholder or a cottar[1] in violation of any interdict or other judicial order.[8]

1. See definition Sec. 34.
2. This apparently applies to squatters, and the somewhat harsh result is that if a landlord has tacitly not objected to a man taking possession of a small bit of ground and effecting improvements thereon he (the landlord) cannot remove the squatter without paying for the improvements, notwithstanding that no rent was ever paid. It is thought that the expression "paying rent" means liable to pay whether payment has actually been made or not.
3. Section 7, requiring a year's notice before renouncing, does not apply to cottars.
4. See Sec. 34 and Schedule. It has been held that a cottar cannot claim by an action in the Court of Session (*M'Dougall* v. *M'Alister*, 6 Mar. 1890, 17 R. 555). The improvements must be valued under Sec. 10, *infra*.

Sec. 9.

5. See note 4 to Section 8, *supra*.

6. See Sec. 2 and note 12 thereto, Act 1911; see note 5 to Sec. 8, *supra*.

7. See note 6 to Sec. 8, *supra*.

8. This clearly implies a right in the landlord to prevent the erection of unnecessary, unsuitable, or needlessly expensive buildings. It is thought that in the case of a cottar (not a crofter) he could prevent the erection of any buildings. The Crofters Commission rejected a claim by a cottar who paid no rent and had removed of his own accord (C.C. Report 1904-5, p. xxii.).

An application was made to the Commission to fix fair rent by a cottar, but was refused as there is no power to fix a fair rent for a cottar (*W. Mackenzie* v. *Marquis of Zetland*, C.C. Report, 1906-7, p. xii.).

Principle of valuation.

10.—Improvements[1] shall be valued under this Act[2] at such sum as fairly represents the value of the improvement to an incoming tenant,[3] provided that in fixing the amount of compensation payable, the value of any assistance or consideration which may be proved to have been given by the landlord or his predecessors in title, in respect of such improvements shall be taken into account, and deducted from such compensation, and the value of any deterioration[4] committed or permitted by the tenant within the four years preceding shall also be deducted from the said compensation.[5]

1. See Secs. 8 and 34 and Schedule.

2. See Sec. 31.

3. This is precisely the language of the Agricultural Holdings (Scotland) Act, 1908.

4. "Deterioration" evidently applies only to the land and so much of the buildings, &c. as are the property of the landlord. In a case which came before the Crofters Commission, the landlord pleaded that in accordance with Section 6, *supra*, the value of the improvements and all other circumstances were taken into acconnt in fixing a fair rent, and that consequently no compensation was due. The Commissioners repelled this plea, and pointed out that Section 6 is directed to protect the crofter from being rented on his own improvements, but that under this Section 10 compensation is payable (*Garrioch* v. *Horwood's Trs.* C.C. Report 1907-8, p. xxxvii.).

5. Section 31 only applies to improvements under the Agricultural Holdings Act, and nowhere is there any express provision for assessing the compensation referred to in this section. It has, however, been decided in *M'Dougall* v. *M'Alister*, 1890, 17 R. 555, that this may be done by the Commissioners (now the Land Court) to the exclusion of the ordinary Courts of Law.

V.—*Enlargement of Holdings.*[1]

Sec. 11.

Application by landholders for enlargement

11.—It shall be lawful for any [*five or more* *] landholders resident on neighbouring[2] holdings in a parish, where any landlord or landlords after application made to him or them have refused to let to such landholders available land[3] on reasonable terms for enlarging the holdings of such landholders, to apply to the Board of Agriculture setting forth that in the said parish or in an adjacent parish there is land available for the enlargement of such holdings which they are willing to take on lease,[4] but which the landlord or landlords refuse to let on reasonable terms; that is to say, on such terms as are usually obtained in the letting of land of the like quality, and similarly situated in the same district, for other purposes than that of a deer forest, or of a grouse moor, or other sporting purpose.[5]

1. *It is necessary to read Section* 16, *Act* 1911, *along with this section and the succeeding sections of this Act relating to enlargement of holdings.* Section 16 (1) of that Act bears that "the provisions of this Act relative to the enlargement of holdings are extended to an application for enlargement of a holding by a single landholder or two or more landholders," &c. It also provides that sub-sections 7 to 13 and 16 to 18 of Section 7 thereof relating to the constitution of new holdings shall, with the necessary modifications, apply for the purpose of applications for the enlargement of holdings as fully as for the purpose of the constitution of new holdings.

   Section 16, *infra*, makes provision for enlarging holdings in certain cases where the heirs of deceased crofter are remote.

2. Not necessarily contiguous, but see next note.

3. This must be land in respect of which a person would be admissible to registration as a new holder (Sec. 7 (16), Act 1911), and if arable land it must lie contiguous or near to land already in the occupancy of the landholder; further, the enlargement shall not be so as to make the enlarged holding greater in extent or rent than competent for a new holding under the Act (Sec. 16 (2), Act 1911).

4. Assuming that, under this Section 11, such land were voluntarily let on lease after the coming into operation of the Act of 1911, would it come under the provisions of the Landholders Acts? No doubt the purpose is to enlarge a holding, but Section 15, *infra*, does not expressly apply to land voluntarily let while Section 35, Act 1911, does. The point is not free from difficulty, and may be raised in a special case under Section 25, Act 1911. Section 16 (1), Act 1911, rather suggests that even an addition voluntarily made is intended to come under the same conditions as those applicable to the holding to which the addition is made. Under Section 7 (1) of that Act it would appear open to the landlord not to agree.

* Words in italics repealed, but see note 1.

Sec. 11.

5. Section 26 (5), Act 1911, indicates that in certain circumstances land comprised in a deer forest or preserved mainly for sport may be used for enlarging a holding, but subject to Section 7 of that Act, which includes provision for compensation in such a manner that there is not much prospect of any of such land being taken. There is the further restricting provision under Sec. 13 (3), *infra*.

Under Section 4 (6), Act 1897, the Commissioners (now the Board) may take such steps as they think proper for providing land for subdivision among or for enlargement of the holdings of crofters or cottars in congested districts, &c.

Intimation to landlords.

12.—The Land Court shall, upon receiving such an application [1] as aforesaid, intimate the same to the landlord or landlords therein alleged to have refused to let available land [2] for the enlargement of such holdings as aforesaid, and shall afford such landlord or landlords, and the landholders by whom the application is made, an opportunity of being heard thereupon, and shall ascertain as far as possible how far the small size of the holdings has been due to the action of the landlord or of the landholders, and shall make such other inquiry as to them shall appear necessary or proper; [3] and if they are satisfied—

(1) That there is land in the parish, or in an adjacent parish, available for enlarging the holdings of the said landholders, but that the landlord or landlords refuse to let the same for that purpose on reasonable terms;

(2) That the applicants [4] are willing and able to pay a fair rent [5] therefor, and that in the event of an order for the letting thereof being made, the applicants [4] are able properly to cultivate the same, in so far as it consists of arable land, and properly to stock the same, in so far as it consists of pasture land;

the Land Court may make an order for a lease [6] of the said land, or such part or parts thereof as they may think proper, to the applicants, or one or more of them, at a fair rent,[5] and upon such terms and conditions as the Land Court shall consider just.[6]

It shall be competent for the Land Court by an order under this section to provide, if this shall appear to them to be just and expedient, for admitting the landholders who have applied as aforesaid, to participate in common pasture occupied by other

landholders, or for conferring upon the applicants rights of pasturage[7] common as among themselves over available land specified in the order, upon such terms and conditions as the Land Court shall determine. Sec. 12.

It shall be competent for the Land Court to draw up a scheme regulating the use by landholders on the same estate of seaweed[7] for the reasonable purposes of their holdings, peat bogs,[8] and heather or grass used for thatching purposes, and to include the charge for all these in the fixed rent.[4]

1. from the Board under sub-section 9 of Section 6, Act 1911 (see Sec. 16 (1) of that Act).
2. See note 3 to Sec. 11, *supra*.
3. See Section 25 (3), Act 1911, as to hearing evidence, and Sec. 21, *infra*.
4. See proviso to Sec. 16 (1), Act 1911.
5. As defined in the preceding section. The use of the expression "fair rent" here goes a long way to show what a fair rent was meant to be.
6. The reference to a "lease" here raises difficulty. The Lord President in *Traill's Trs.* v. *Grieve*, 1890, 17 R. 1115, correctly stated the intention of the Act. But see note 4 to Sec. 11 *supra*. Sections 7 to 13 and 16 to 18 of that Section are made under Section 16 of the Act of 1911 to apply for the purpose of applications for enlargement of holdings (with the necessary modifications) as fully as for the purpose of the constitution of new holdings. This taken in conjunction with Section 15, *infra*, would appear to indicate that on enlargement being obtained the enlarged holding is to be treated in all respects as a *unum quid*, at all events where the enlargement is not by agreement. The definition of "lease" in the Agricultural Holdings (Scotland) Act, 1908, Section 35, is "a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year." See as to definitions Section 34, *infra*. Interdict was granted against a crofter entering on or tilling any part of the land assigned by the Commission for enlargement of his holding prior to the date fixed for entry (*Congested Districts Board Commissioners* v. *MacInnes*, 11 July 1910, 26 S.C.R. 343). While litigation was proceeding between crofters and a tenant farmer to determine whether the crofters were to have part of the farm for the enlargement of their holdings the farmer sowed the land and was held entitled to the crop, although the crofters were successful and ejected him before the crop was reaped. *Swanson* v. *Grieve*, 1891 18 R. 371.
7. See Act of 1891. See *MacKinnon* v. *Macdonald*, 1905, 7 F. 589, 42 S.L.R. 445, for observations by Lord Kyllachy on the question of the right to take sea ware.
8. See note 12 to Sec. 1, *supra*.
   See also Sec. 21, *infra*.

Sec. 13. Available land.

13.[1]—[(1) *Land shall not be deemed available land for the purposes of this Act unless it lies contiguous or near to land already in the occupancy of the crofters making the application, and belongs to the same landlord or landlords as the land occupied by the said crofters:*

(2) *If the land is subject to an existing lease for a term of years, entered into prior to the commencement of this Act (not being a lease for the purposes of a deer forest, or of a grouse moor, or for other sporting purpose), it shall not be competent to assign any part thereof for the enlargement of the holdings of the crofters who have made the application, unless with the assent of the landlord or landlords and of the tenant or tenants of such land, and upon such terms as such landlord or landlords and tenant or tenants shall voluntarily agree to:* *]

(3) It shall not be competent for the Land Court to assign land for the enlargement of the landholders holdings—

[(*a*) *If the land forms part of any garden, policy, park, plantation, or other wood;* or

(*b*) *If the land forms part of any farm, whether subject to a lease or not, unless the Crofters Commission are satisfied that the part proposed to be assigned for the enlargement of the crofters' holdings, can be so assigned without material damage to the letting value of the remainder;*

(*c*) *If the land forms part of an existing farm or other holding, unless the rent or annual letting value of such farm or holding shall exceed one hundred pounds;*

(*d*) *If the land is arable or improved pasture in the immediate vicinity of a residence or farm steading, or is land which could not be assigned for the enlargement of the crofters' holdings without substantial impairing the amenity of such residence or farm steading;* *]

(*e*) If the land form part of a deer forest, and if the assignation of such land for the purposes of this Act would seriously impair the use of the remainder as

* Repealed as in italics. Sec. 16 (2), Act 1911.

a deer forest, and would act injuriously on the prosperity of the inhabitants generally of the district in which such deer forest is situated.[2]

[(4) *The aggregate value of the land assigned for the enlargement of the crofters' holdings shall not exceed one third of the rent or annual letting value of the farm or other holding from which it is taken, when the annual value of the holding is between one hundred pounds and one hundred and fifty pounds, or one half when the annual value is above one hundred and fifty pounds and below three hundred pounds, or two thirds when the annual value of the holding is above three hundred pounds.*

(5) *It shall not be competent for the Crofters Commission to grant the application of the crofters for the enlargement of their holdings, to the extent or effect of raising the annual value of their holdings respectively to a higher amount than fifteen pounds each.**]

1. See Section 16 (2), Act 1911, as to repeal of the major part of this section, and as to what land may be available land for enlargement of holdings. See Introduction, p. 11, &c., also note 3 to Sec. 11, *supra*, and Secs. 7 and 16 (1), Act 1911.

2. See note 5 to Sec. 11, *supra*. Notice must be given to the sporting tenant of any application to take any part of subjects let to him. Sec. 21.

Deduction from rent in case of lands holds for sporting purposes.

14.—Where a portion of any land held under lease[1] [*for the purposes of a deer forest or of a grouse moor, or for other sporting purposes* †] is assigned by the Land Court for the enlargement of the holding or holdings of a landholder or landholders under this Act the Land Court shall, when they so assign such land, fix the amount of the deduction (if any) which in their judgment ought to be made from the rent payable by the tenant under the lease to the landlord, in respect of the portion of the land held under the same having been assigned as aforesaid, and thereafter the tenant under the lease shall be liable to the landlord only in the balance of the rent thereby stipulated, after deduction of the sum so fixed.

1. See definition, Note 6, Sec. 12, *supra*. This power is evidently conferred on the Land Court also in the case of land taken to form new small holdings, because under Section 11 (*d*) of the Act of 1911 they are authorised to do whatever may be necessary to adjust the

* Repealed as in italics. † Words in italics repealed.

Sec. 14.

rights of parties (landlord and tenant) affected by the taking of land for such purposes, and this authority also applies to the enlargement of holdings (Sec. 16 (1), Act 1911).

Assigned land.

15.—Land assigned by the Land Court under the authority of this Act shall be deemed to be part of the holding or holdings to which it is so assigned, and shall be subject to the provisions of this Act relative to landholders' holdings.[1]

1. It will be observed that this section does not apply to land let on lease for the enlargement of small holdings where the landlord has agreed to the scheme on reasonable terms as set forth in Section 11, *supra*. See note 4 to that section and note 6 to Sec. 12.

Bequest of holding.

16.—A landholder may, by will or other testamentary writing, bequeath his right to his holding to one person,[1] being a member of the same family; that is to say, his wife or any person who, failing nearer heirs, would succeed to him in case of intestacy[2] (hereinafter called the "legatee"), subject to the following provisions:

(*a*) The legatee shall intimate the testamentary bequest to the landlord or his known agent within [*twenty-one days*[3] *] after the death of the landholder unless he is prevented by some unavoidable cause[4] from making intimation within that time, and in that event he shall make intimation as soon as possible thereafter:

(*b*) Intimation to the landlord or his known agent by the legatee shall import acceptance of the landholder's right to the holding by the legatee:

(*c*) Within one month after intimation has been made to the landlord or his known agent, he may intimate to the legatee that he objects to receive him as landholder in the holding:

If the landlord or his known agent makes no such intimation within one month, the legatee shall come into the place of the landholder in the holding as from the date of the death of the deceased landholder.

(*d*) If the landlord or his known agent intimates that he objects to receive the legatee as landholder in the holding, the legatee may present a petition to the Land Court (Sec. 20, Act 1911) praying for decree declaring that

* Words in italics repealed and "two months" substituted.

he is the landholder therein as from the date of the death of the deceased landholder, of which petition due notice shall be given to the landlord, who may enter appearance and state his grounds of objection; and if any reasonable ground of objection is established to the satisfaction of the Land Court they shall declare the bequest to be null and void; but otherwise they shall decern and declare in terms of the prayer of the petition:

(*e*) The decision of the Land Court under such petition as aforesaid shall be final:[5]

(*f*) Where the legatee shall have presented a petition to the Land Court as aforesaid, the legatee pending any proceedings shall have possession of the holding unless the Land Court shall otherwise direct on cause shown:

(*g*) If the legatee shall accept the bequest, and the bequest is not declared to be null and void as aforesaid, the legatee shall be entitled to possess the holding on the same terms and conditions as if he had been the nearest heir of the landholder.

(*h*) If the legatee does not accept the bequest, or if the bequest is declared to be null and void as aforesaid, the right to the holding shall descend to the heir of the landholder, in the same manner as if the bequest had not been made.[6]

Provided always, that in the case of any legatee, or heir-at-law more distant than wife, son, grandson, daughter, grand-daughter, brother, or son-in-law, it shall be competent to the landlord, on his own part, or on the part of neighbouring landholders, to represent that, for the purpose of enlarging their holding or holdings, the holding ought to be added to them; and in all cases in which the Land Court shall determine in favour of such representation, the heir, or the legatee, as the case may be, who, but for such determination, would have succeeded to the holding, shall have right to any claim of compensation for improvements[7] thereon which would have been competent to the deceased landholder if he had been removed at the date of his death: provided further, that if in any such case the landlord shall fail, within six months after the determination of the Land Court, to add the holding to one or more of the adjoining holdings, it shall be competent to the neighbouring landholders to apply to the Land Court, who shall make

Sec. 16. an order assigning the holding to one or more of the neighbouring landholders for the enlargement of his or their holding or holdings.

1. See Introduction, p. 21, and Sec. 26 (8), Act 1911, as to joint tenancy through "statutory successors" (which includes legatees: Sec. 31, Act 1911); also Section 19, *infra*, as to succession of heirs portioners.

2. A crofter cannot bequeath his croft to a person, except his wife, who would not, failing nearer heirs, succeed him *ab intestato*. Accordingly he cannot bequeath to the son of his mother's sister (*Mackenzie* v. *Cameron*, 1894, 21 R. 427). He may, however, bequeath croft to a niece, passing over his own children (*MacLean* v. *MacLean*, 1891, 18 R. 885).

   The Crofters Commission held that a holograph will bearing "I hereby will and desire that all my subjects and effects, in case of my death, be bequeathed to my lawfully married wife, Mary Worth or Hepburn," was in terms to carry tenancy to the croft (*Hepburn* v. *Hepburn*, C.C. Report, 1907-8, p. xv.).

   It having been decided that a person possessing a croft ostensibly as legatee of a deceased crofter was not entitled to the character of legatee, it was held competent to interdict him from "taking possession of (he was in possession) or interfering in any way with the croft (*Colquhoun* v. *Mackenzie*, 1894, 22 R. 23).

   A crofter's widow had been in possession of his croft for seventeen years, and the pursuer (the crofter's heir) during all that time had intimated no claim either to the widow or the landlord. Held that he was barred from having it declared that he was lawful tenant and from having the widow removed (*MacIver* v. *MacIver*, 1909, S.C. 639; 46 S.L.R. 552; 1 S.L.T. 258).

3. Now two months (Sec. 20, Act 1911).

4. *E.g.* if the legatee were out of the country and had not been informed of the bequest.

5. Question whether the decision of a Sheriff that a person to whom a holding had been bequeathed was not one of the relatives to whom deceased might legally bequeath his holding was a final decision in the sense of the Act (*Mackenzie* v. *Cameron*, 25th Jan. 1894, 21 R. 427). It is not clear that, notwithstanding this sub-section, an appeal by stated case on a question of law may not be taken under Sec. 25 (2), Act 1911, which is very general.

6. If the eldest daughter, in case of heirs portioners (see Sec. 19, *infra*), renounce, the right passes to her representatives, not to her sisters (*Balfour* v. *Hutchison*, 1899 (O.H.), 7 S.L.T. 82).

7. See Sec. 8, *supra*, and Schedule.

   Section 22, Act 1911, makes provision for the case where the heir-at-law, &c. cannot be traced. In such case the holding may be let with the approval of the Land Court.

VI.—*Crofters Commission.*

17.[1]—(*Wholly repealed.*)

1. See introduction, p. 37. The whole of this section is repealed, bu

its place is in large measure taken by Section 3 of the Act of 1911 (constituting the Land Court), taken in conjunction with Section 4 of that Act (constituting the Board of Agriculture for Scotland), and particularly by the provision of sub-section 6 of Section 4, for designating a member of the Scottish Board of Agriculture the "Commissioner for Small Holdings."

Land Court to make report of their proceedings.

18.—The Land Court shall once in every year after the year one thousand eight hundred and eighty-six make a report to the Secretary for Scotland as to their proceedings under this Act, and every such report shall be presented to Parliament.[1]

1. See Sec. 4 (2), Act 1911, as to Annual Report by Board of Agriculture.

Area covered by the Act.

19.[1]—[*The Crofters Commission after due inquiry shall ascertain what parishes or islands or districts forming aggregates of parishes, within the counties of Argyll, Inverness, Ross and Cromarty, Sutherland, Caithness, Orkney, and Shetland, are crofting parishes, or aggregates of crofting parishes, and shall determine that this Act shall apply to such parishes.*

Such determination shall be reported to the Secretary for Scotland in one or more reports, and may be confirmed by him with or without modification.

From and after the date of such confirmation, this Act shall apply to the parishes included in the determination.

Every such determination, when confirmed, shall be laid before Parliament.

*Within the parishes to which this Act is determined to apply as aforesaid,**] this Act shall apply to every landholder [*who is the tenant of a holding at the passing of this Act,**] and to his heirs and legatees in the same manner as if the tenancy were a lease.

In the event of the heirs at law of the landholder being heirs portioners, the eldest of such heirs portioners shall succeed to the tenancy without division.[2]

1. It will be seen that nearly the whole of this section has been repealed. The result is that the crofting parishes are finally fixed for the purposes of the Landholders Acts and of the Congested Districts (Scotland) Act, 1897. This is important with reference to Section 7 (16), (*b*), Act 1911, and as restricting the jurisdiction of the Board with reference to their powers under the Congested Districts Act.
2. If the eldest daughter renounce, the right passes to her representatives, not to her sisters (*Balfour* v. *Hutchison*, 1899 (O.H.), 7 S.L.T. 82.)

* Words in italics repealed.

Sec. 20.

Procedure in fixing fair rent.

20.—When an application is made to the Land Court to fix a fair rent,[1] intimation thereof shall be given to the other party interested in the holding, landlord or landholder, as the case may be,[2] and the Land Court shall appoint a time and place at which parties shall be heard[3] in reference to the matter of the application.

It shall be competent for the Land Court in case of such application to visit the holding, if they think fit, as also to call in the aid of an assessor or assessors, specially qualified by local knowledge or otherwise, and to hear the case wholly or partially with the aid of such assessor or assessors, or they may obtain a valuation or report from a competent valuer or valuers appointed by them for the purpose.[4]

1. See Sec. 6, *supra*.
2. If there were omission to give this intimation, any decision would be invalid. (*Dalgleish* v. *Livingston*, 1895, 22 R. 646.)
3. There is no provision for leading evidence, but see Sec. 25 (3), Act 1911.
4. The Court are not bound to act on such a report, which is only for their guidance.

Procedure in enlarging holdings.

21.—When an application[1] for an enlargement[2] of landholders' holdings is made to the Land Court, they shall intimate such application[1] to the landlord or landlords, as also to the tenant or tenants, and any other person or persons in the occupation of or otherwise interested in the land proposed to be added to the landholders' holdings, including heritable creditors holding securities over the same, and shall give notice of the time or times, and place or places, at which parties will be heard in regard to the matter of the application.

It shall be competent to the Land Court to visit the place to which the application[1] relates, and also if they shall think fit, to call in the assistance of an assessor or assessors, or of a valuer or valuers, as hereinbefore provided.[3]

In assigning land for the enlargement of landholders' holdings, it shall be competent for the Land Court, if they think fit, to make such order or orders with respect to the erection and maintenance of fencing[4] of the said land as they shall consider necessary or expedient, and to decern that the expense of such erection and maintenance shall be paid by the person or persons interested, as the Land Court shall consider just, having regard to the advantage accruing to the said person or persons respectively from such fencing.

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It shall also be competent to the Land Court to decide summarily any questions relating to the boundaries or marches between landholders' holdings, including grazings, or between landholders' holdings, including grazings and adjoining lands.[5]

In the event of any dispute arising as to whether a person is a "landholder" within the meaning of this Act, it shall be competent for the Land Court to determine such question summarily.[6]

1. "Application" and "applicants" in this section mean application from the Board under sub-section 9 of Section 7, Act 1911, and the persons referred to in the application (Sec. 16 (2), Act 1911).
2. Sec. 12, *supra*, requires the Commission (now the Land Court) to make the intimation to the landlord.
3. Sec. 20.
4. A crofter has no title to call on neighbouring proprietor to join in defraying expense of a march fence (*Macdonald* v. *Dalgleish*, 1894, 21 R. 900). It is doubtful if this power would enable the Land Court to charge an adjacent proprietor with part of the cost of fencing, except in so far as that could be done at common law. In a case before them regarding fencing between crofts, the Crofter Commission held that as the matter had been decided by the Sheriff in a litigation between the parties they could not interfere, they had no power to review the judgment of the Sheriff (*Mackenzie* v. *Smith*, C.C. Report 1906-7, p. 12). The Commission for the same reason followed the same course in another case (*Macleod* v. *Maclean*, C.C. Report 1906-7, p xiii.).
5. This apparently applies to marches between landholders' holdings and between such holdings and adjacent lands not let to landholders.
6. See Section 25, *infra*. Where Crofter Commission fixed fair rent of a person who was a sub-tenant, in an action by landlord for reduction of order fixing fair rent, on the ground that the Commissioners had not considered whether the sub-tenant was a crofter within the sense of the Act, held that the order was not final on the point, and that the landlord was entitled to have the decision of the Court of Session on the question. *Dalgleish* v. *Livingston*, 12 June 1895, 22 R. 646. In that case it was also questioned if the Commissioners' decision that the sub-tenant was a crofter within the sense of the Act would be final. Opinion of Lord Kincairney that a sub-tenant cannot be a "Crofter." *M'Dougall* v. *M'Alister*, 6 Mar. 1890, 17 R. 555. Held that a sub-tenant was not a crofter in *Livingstone* v. *Beattie*, 19 Mar. 1891, 18 R. 735. See also notes to Section 1, *supra*. Where landlord and tenant dispute as to whether the tenant is a crofter and is entitled to the benefits of the Crofters Acts, it is only through the ordinary Courts that the dispute can be finally settled, per Lord M'Laren in *Stuart and Stuart* v. *Macleod*, 8 Dec. 1891, 19 R. 223. A person who at the passing of this Act was a crofter died before the parish in which the croft was situated was declared a crofting parish in terms of Section 19, held that his heir who took

Sec. 21.

possession was a crofter and entitled to resist removing. *M'Nab* v. *Campbell*, 29 Feb. 1888, 15 R. 472. The Court of Session, notwithstanding the terms of this Section and of Section 25, held that it was competent for them to determine whether a person was a crofter holding a croft, and that the Crofters Commission not being a Court of Law a plea of *lis alibi pendens* is not available. *Marquess of Breadalbane* v. *Orr*, 1896, 4 S.L.T. 75.

22.—(*Repealed*).

23.—(*Repealed*).

Taking evidence and expenses before Land Court.

24.—In any application under this Act it shall be competent to any of the parties thereto to demand, and for the Land Court to order that the evidence shall be taken upon oath,[1] [*and it shall also be competent to the Crofters Commission to make such order as to expenses as they think fit.**]

1. See Sec. 25 (3) and Sec. 7 (11), Act 1911.

Finality of Land Court decision.

25.—The decision of the Land Court in regard to any of the matters committed to their determination by this Act shall be final.[1]

1. But see Sec. 25, Act 1911, as to special cases on questions of law. An effort has apparently been made to exclude the jurisdiction of the ordinary Courts, but it will still be competent to take action in the Court of Session in cases where the Land Court act *ultra vires*, and thus encroach on the jurisdiction of the ordinary tribunals, also in questions as to the interpretation of the Statutes. They will be rigidly held down by the words "for the purposes of the Landholders Acts" with which sub-section 2 of Section 25, Act 1911, commences. Held that the jurisdiction of the Court of Session to entertain an action by a proprietor for declarator and interdict against crofters whose holdings adjoin his lands, and who asserted that at the date of this Act they had rights of pasturage over his property, was not ousted by an application by the crofters to the Commissioners prior to the raising of the action and still pending to have fair rents fixed (*Duke of Sutherland* v. *Read*, 18 Dec. 1890, 18 R. 252. See also *Stuart and Stuart* v. *M'Leod*, 1891, 19 R. 223; *Dalgleish* v. *Livingston*, 1895, 22 R. 646; *Newell* v. *M'Leod*, 1899, 1 F. 950; *Balfour* v. *Hutchison* 1899, 7 S.L.T. 116). See note 5 to Sec. 16, *supra*.

Use of sheriff court houses.

26.—The Land Court may use, free of charge, for holding its sittings the court houses commonly used as sheriff courts, when the same are not required by the sheriffs, and the officers of such courts shall be bound to attend the sittings of the Land Court,

* Words in italics repealed.

and perform similar duties to those which they are required to perform on the occasion of sittings of the sheriff court, with right to exact the same fees as are exigible by them for service at the sittings of the sheriff court. Sec. 26.

Record of proceedings; transmission of applications by sheriff-clerk; sheriff-clerk's remuneration.

27.—There shall be kept in the sheriff-clerk's office of the county to which, or to any part of which this Act applies, a book to be called the "Landholders' Holdings Book." In this book the sheriff-clerk shall record every order of the Land Court with the application on which it proceeds, and any other proceeding in the case which the Land Court may think necessary to be recorded. It shall be the duty of the Land Court to send such orders and applications to the sheriff-clerk to be recorded.

In any county to which this Act applies which is divided into districts for judicial purposes, the "Landholders' Holdings Book," applicable to the holdings within any district in which there is a resident sheriff-clerk or sheriff-clerk depute having an office, shall be kept by the sheriff-clerk or sheriff-clerk depute resident within the district.

Every application shall be addressed to the Land Court at the sheriff clerk's office, and it shall be the duty of the sheriff-clerk to transmit the same to the Land Court, according to such regulations as the Secretary for Scotland may prescribe.

The sheriff-clerks shall receive such remuneration as the Treasury may sanction out of moneys to be provided by Parliament.

Forms of procedure.

28.[1]—(*Repealed.*)

1. See Sec. 25 (6), Act 1911, &c.

29.—The Land Court may, subject to the approval of the Secretary for Scotland, frame and issue such printed forms of application and other forms of procedure as they shall think proper.

It shall be in the power of the Land Court to makes rules with reference to proceedings before the Land Court, and also, with the approval of the Treasury, to fix a scale of costs and fees to be charged in carrying the Act into execution, and the taxation of such costs and fees, and the persons by whom, and the manner in which, such costs and fees are to be paid.

Sec. 30.

Sole arbiter may be chosen.

30.—Where, in any proceeding under this Act, the Land Court is empowered to pronounce an order, the landlord and the landholder may agree[1] to accept the decision of a sole arbiter mutually chosen instead of the decision of the Land Court, and in that case any order pronounced by such sole arbiter shall, when recorded in the "Landholders' Holdings Book" along with the agreement to accept his decision, be as effectual to all intents and purposes as an order of the Land Court; and all regulations applicable to the Land Court and to the orders pronounced by them, shall apply to any sole arbiter and the orders pronounced by him.

1. For Form of Agreement, see Appendix VI.

Saving of 46 & 47 Vict. c. 62.

31.—Nothing in this Act[1] shall affect the provisions of the Agricultural Holdings (Scotland) Act, 1883,[2] provided that:

Where any improvements are valued under the said Act with a view to compensation to be paid to a landholder, such valuation shall be made, unless the landlord and the landholder otherwise agree, by the Land Court, according to the procedure prescribed by this Act.

1. See Sec. 3, *supra*, and Sec. 10 (3), Act 1911.
2. This Act is repealed by the Agricultural Holdings (Scotland) Act, 1908, which now takes its place. (See Appendix II.)

Loans for the purchase and equipment of fishing boats.

32.—For the purpose of enabling the Fishery Board for Scotland established under the Fishery Board (Scotland) Act, 1882, to make advances by way of loan to persons engaged in the prosecution of the fishing industry, whether landholders or others, in crofting parishes [*in all or any of the counties to which this Act applies, and* *] abutting upon the sea, it shall be lawful for the Treasury to advance to the Fishery Board such sums as may from time to time be placed at their disposal by Parliament for the purpose.

The purposes to which the sums advanced as aforesaid shall be applied by way of loan shall be deemed to include the building, purchase, or repair of vessels, boats, and gear for fishing purposes, and any other purpose of the like nature, for the benefit or encouragement of the fishing industry within the localities above specified, which may be sanctioned by the Fishery Board, with consent of the Secretary for Scotland.

The loans in making which the said sums shall be applied, shall be made by the Fishery Board upon such terms as to repayment,

* Words in italics repealed.

security, rate, and payment of interest, and otherwise, as the Secretary for Scotland, with the consent of the Treasury, shall determine.

All moneys due in respect of loans made under this Act may be recovered by the Fishery Board summarily, in manner provided by the Summary Jurisdiction Acts, and the secretary of the Board for the time being shall have power to sue for and recover such moneys in name of the Board. 27 & 28 Vict. c. 53. 44 & 45 Vict. c. 33.

A certificate, purporting to be signed by the chairman and secretary of the Fishery Board, stating the amount due from any person in respect of any loan made to him under this Act, together with the interest thereon, shall, until the contrary is proved, be evidence of the amount due and of the liability of the person therein named to pay the same.

If at any time while any part of a loan under this Act remains unpaid, the Fishery Board are satisfied that the borrower is not carrying into effect the undertaking for which the loan was made, they may forthwith sue for and recover summarily the loan and all moneys due by him in respect thereof.

All moneys recovered by the Fishery Board in repayment of such loans, and interest thereon, shall be paid by the Fishery Board to the account of Her Majesty's Exchequer, as the Treasury may from time to time direct.

The Fishery Board shall, in the annual report to be made by them to the Secretary for Scotland, in terms of the Fishery Board (Scotland) Act, 1882, and the Secretary for Scotland Act, 1885, give an account of their intromissions under this Act during the preceding year. 45 & 46 Vict c. 78. 48 & 49 Vict. c. 61.

Under Section 4, Act 1897, the Congested Districts Board (now the Board of Agriculture) have power to aid in the developing of fishings, erection of fishermen's dwellings, &c.

Saving in case of holdings in possession of servants.

33.—Nothing in this Act shall apply to any holding or building let to a person during his continuance in any office, appointment, or employment of the landlord, or of any tenant of the landlord, nor to any holding or building let at a nominal rent, or without rent, as a pension for former service, or on account of old age or poverty, nor to any holding or building let to a person during his tenure of any office such as that of minister of religion or schoolmaster, nor [*or*,—Sec. 26 (7), Act 1911] to any innkeeper or

Sec. 33. tradesman placed in the district by the landlord for the benefit of the neighbourhood.[1]

1. See Section 26 (7), Act 1911, which allows the registration *by agreement* of the holder of a holding referred to in this section.

See as to application of this section to a ferryman, *Breadalbane* v. *Orr*, 1896, 4 S.L.T. 118; to servant of a crofter, *Abinger* v. *Cameron*, 1888, 15 R. 598; to tenant of glebe lands, *Nelson* v. *Kidd*, 1892, Report of Commission, p. 150; to a woodman receiving £5 a year, C.C. Report, 1903-4, p. xii.

Definitions. **34.**[1] In this Act ["*crofter*" *means any person who at the passing of this Act is tenant of a holding from year to year, who resides on his holding, the annual rent of which does not exceed thirty pounds in money, and which is situated in a crofting parish and the successors of such person in the holding, being his heirs or legatees.*

"*Crofting parish*" *means a parish in which there are at the commencement of this Act, or have been within eighty years prior thereto, holdings consisting of arable land held with a right of pasturage in common with others, and in which there still are tenants of holdings from year to year, who reside on their holdings, the annual rent of which respectively does not exceed thirty pounds in money, at the commencement of this Act.**]

"Cottar"[2] means the occupier of a dwelling-house situate in a crofting parish with or without land who pays no rent to the landlord, as also the tenant from year to year of a dwelling-house situated in a crofting parish who resides therein, and who pays to the landlord therefor an annual rent not exceeding six pounds in money, whether with or without garden ground, but without arable or pasture land.

"Permanent improvements" means the improvements specified in the Schedule to this Act.

["*Holding*"[3] *means any piece of land held by a landholder, consisting of arable or pasture land, or of land partly arable and partly pasture and which has been occupied and used as arable or pasture land (whether such pasture land is held by the landholder alone, or in common with others) immediately preceding the passing of this Act, including the site of his dwelling-house and any offices or other conveniences connected therewith, but does not include garden ground only, appurtenant to a house.**]

* Words in italics repealed.

"Treasury" means the Commissioners of her Majesty's Treasury. Other expressions have the same meanings as in the Agricultural Holdings (Scotland) Act, 1883.[4]

Sec. 34.

46 & 47 Vict. c. 62.

1. The first two paragraphs of this section are repealed. The use of the word "crofter" is to cease; "landholder" is substituted (Sec. 1, Act 1911) with a very much wider meaning. (Sec. 2, Act 1911.) See Introduction p. 3.

   "Crofting parish" also goes out, except as stated below.

2. See as to rights of cottar Section 9 and Introduction, p. 25. In view of the apparent intention to restrict cottars to crofting parishes, it is evidently a mistake to have repealed the definition of such a parish. Notwithstanding the repeal it is thought that the definition can be founded on where necessary to make the statute intelligible. A cottar may acquire the qualification after the passing of the Acts of 1886 and 1911.

3. The Crofter Commission held in 1884 that a person might be a crofter though his land was held runrig. The Land Court may now apportion runrig land (Sec. 24 (6), Act 1911).

4. See Appendix I.

35.—This Act may be cited as the Crofters Holdings (Scotland) Act, 1886. Short title.

[SCHEDULE.

SCHEDULE.

PERMANENT IMPROVEMENTS.[1]

1. Dwelling-house.
2. Farm offices.
3. Subsoil or other drains.
4. Walls and fences.
5. Deep trenching.
6. Clearing the ground.
7. Planting trees.
8. Making piers or landing stages.
9. Roads practicable for carriages from the holding or holdings to the public road or the sea shore.
10. All other improvements which, in the judgment of the Land Court, shall add to the value of the holding to an incoming tenant.

[1] See also Appendix II.

The Crofters Holdings (Scotland) Act, 1887.

50 & 51 Vict. Cap. 24.

An Act to amend the Crofters Holdings (Scotland) Act, 1886.—[*8th August* 1887]. A.D. 1887.

Be it enacted &c.

Sec. 1.

Short title and construction. 49 & 50 Vict. c. 29.

1.[1]—This Act may be cited as the Crofters Holdings (Scotland) Act, 1887, and shall be read as part of the Crofters Holdings (Scotland) Act, 1886, herein-after called the principal Act.

1. Throughout this Act "Land Court" is substituted for "Crofters Commission," and "landholder" for "crofter,"—Secs. 28 and 31 (5), Act 1911.

Stay of proceedings for sale of landholder's effects.

2.—Any landholder who has made or shall make an application to the Land Court to fix a fair rent[1] for his holding, and against whom legal proceedings have been taken for payment of rent, may apply, under the same or any subsequent application, to the Land Court for an order prohibiting the sale of the landholder's effects upon the said holding by virtue of any decree for payment of such rent; and the Land Court, if satisfied that such sale would have the effect of defeating in the case of such landholder the intention of the Landholders Acts,[2] may, upon such terms as to payment of rent or otherwise as they shall think fit, grant an order prohibiting such sale till the application to fix a fair rent[1] has been finally determined.[3]

Any application under this section shall be made [*within the following periods:*

(1) *In the case of proceedings in dependence at the passing of this Act, within two months of the date hereof:*

(2) *In the case of proceedings instituted after the passing of this Act,**] at any time before the expiration of the *induciæ* in the action.

* Words in italics repealed,—Schedule, Act 1911.

Sec. 2.

The Land Court shall consider and determine applications under this section summarily [4] [*and they may ascertain the facts by means, of affidavits, or by such inquiry as they may deem appropriate in each case.**] The powers conferred by this Act are in addition to those contained in sub-section four of section six of the principal Act, and where any landholder has, subsequent to the Crofters Holdings (Scotland) Act, 1886,[5] coming into operation, granted a bill or promissory note at the request of his landlord for arrears of rent, the Land Court shall not be precluded from dealing with such arrears under the said Act; and where any landholders shall have been called on to pay, and shall have paid, to the holder of such bill or note any larger sum than the Land Court shall hold ought to be paid of such arrears, they may give relief by ordering repayment of such excess by the landlord, or authorise the deduction thereof from future rents in such instalments as they may fix.

1. Sec. 6, Act 1886.

2. Sec. 31 (4), Act 1911.

3. This is in amplification of Sec. 6 (4), Act 1886. See note 7 to that section. The ordinary Courts of Law are not hindered by this provision from granting a decree for payment of the arrears. The Court of Session held that they were entitled to decide whether a person was a crofter or not, that being essential in order to determine whether an order of the Commissioners under this Act was competent. (*Stuart* v. *M'Leod*, 1891, 19 R. 223.) Sec. 25 (2), Act 1911, is evidently intended to exclude the jurisdiction of all Courts except the Land Court. Whether that has been effectually done may be questioned.

4. This section down to the word "summarily," with the substitution of "statutory small tenant" for "landholder," and "equitable rent" for "fair rent," and with any other necessary modifications, applies for the purposes of Sec. 32, Act 1911 (sub-sec. 14 of that section).

5. This is to be construed as meaning the Act of 1886, or the Act of 1911 as the case may be,—(Sec. 31 (4), Act 1911).

As to notour bankruptcy of landholder.

3.—Any landholder in whose favour an order has been granted under the immediately preceding section shall not, for the purposes of section one of the principal Act, be held to become notour bankrupt [1] by reason of any decree obtained or diligence done before or during the subsistence of such order, and for the rent to which such order relates: Provided always, that this section shall

* Words in italics repealed,—Schedule, Act 1911.

not, after the decision of the Land Court on the arrears due by such landholder, continue to apply to such decrees or diligence as shall not be invalidated by such decision.

1. Sec. 1 (6), Act 1886. Where an order prohibiting the sale of effects has been pronounced the landholder is not to be held to become notour bankrupt (to the effect of enabling the landlord to have him removed for breach of a statutory condition under Sec. 1, Act 1886) by reason of any decree, or diligence following on a decree, for rent, done or during the subsistence of the order. The language of the section might have made it clearer that such an order was not to apply to decrees and diligence at the instance of others than the landlord.

Amendment of section 6 of 49 & 50 Vict. c. 29.

4.—Section six, sub-section three, of the principal Act shall be read and construed as if the words "the first term of Whitsunday or Martinmas next following" were inserted between the words "and" and "the" in the said sub-section.[1]

1. This amendment does not remove all the difficulty arising under Sec. 6, sub-section 3, referred to. See note to that sub-section.

The Crofters Common Grazings Regulation Act, 1891.

54 & 55 Vict. Cap. 41.

An Act to regulate Crofters Common Grazings in Scotland.—[28*th July* 1891.]

A.D. 1891.

Be it enacted, &c.

Sec. 1.

Short title and construction.

1.—This Act may be cited as the Crofters Common Grazings Regulation Act, 1891, and shall be read as part of the Crofters Holdings (Scotland) Act, 1886,[1] hereinafter called the principal Act.

1. See also Sec. 24, Act 1911 ; Sec. 12, Act 1886, and Sec. 5 (5), Act 1897. The word "landholder" is substituted in the following sections for "crofter," and "Land Court" for "Crofters Commission,"—(Secs. 28 and 31 (5). Act 1911).

Appointment of committee.

2. The landholders [*in any township or townships situated in a crofting parish or parishes within the meaning of the principal Act,**] who share in the same common grazing, may, at a public meeting called by public notice, appoint a committee [1] of such number as the meeting shall think fit, [*not being less than three or more than five,*†] who shall be charged with the duty (in so far as such matters are not regulated by conditions binding in terms of section one, subsection five, of the principal Act) of making regulations as to the number of stock which each landholder shall be entitled to put on the common grazing and as to any other matters affecting the fair exercise of their joint rights therein by the several landholders.

The notice of meeting may be given by any two landholders interested in the common grazing or other right, and the notice shall be given by being published for two successive weeks in any newspaper circulating in the parish, or by being posted for two successive weeks at or near the door of every place of worship and every public school in the district affected.

* Words in italics repealed,—Schedule, Act 1911.

† Words in italics repealed,—Sec. 24 (4), Act 1911.

Sec. 2.

In the event of any dispute arising as to the sufficiency of any such notice, such dispute shall be decided summarily by the Land Court, and their decision shall be final.

The regulations so made shall be submitted to the Land Court, who shall cause reasonable notice to be given to the landlord of the said common grazing; and shall hear the parties, if this be desired by any party, and make such inquiry as they may deem necessary; and they shall, in considering the said regulations, have regard to any existing custom [*of the township* *] in the matters affected, whether founded on estate rules or otherwise; and they may approve of the proposed regulations with or without alteration, or they may refuse to approve of the same; and, when so approved, such regulations shall come into force and may be added to or altered by the committee from time to time with the like approval.

1. The Land Court may now appoint a Committee, and they may appoint any person to summon and attend any meeting of the Committee appointed under this Act (Act 1908, *infra*).

Casual vacancies.

3.—Such committee shall remain in office for three years, and at the end of every such period a new committee shall be appointed at a public meeting, and after public notice as aforesaid. Outgoing members shall be eligible for re-election. Vacancies occurring by death or resignation shall be filled up by nomination of the remaining members. A majority shall be a quorum. The said committee shall appoint one of their number to act as clerk or constable.

On failure of landholders to appoint committee, Land Court may do so.

4.—In case the landholders interested in any common grazing shall at any time fail to appoint a committee, the Land Court may, [*on the request in writing of any two crofters interested or the landlord or landlords, and* †] after making such inquiry, if any, as the Land Court may deem necessary, appoint a committee who shall have the same duties and powers, and remain in office for the same period, as if they had been appointed by the landholders, and in the event of such committee failing to make regulations within three months after their appointment, the Land Court may make such regulations themselves [*on the request in writing of any two crofters or of the landlord.*†]

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* Words in italics repealed,—(Schedule, Act 1911).

† Words in italics repealed,—(Sec. 3, Act 1908).

Sec. 5.

Petition to Land Court in case of breach of regulations.

5.—The committee shall see to the due observance of the regulations, and in case of any breach or non-observance thereof, they or any two landholders interested, or the landlord, may make application to the Sheriff by petition, and the Sheriff may upon such application, make such order or orders for the enforcement of the said regulations by granting warrant for the sale of surplus stock and disposal of the proceeds, by causing the same to be paid to the owner of such stock under deduction of expenses, or by imposition of penalties, or otherwise as he shall think fit. And he shall have power to award expenses, and such expenses as the committee may duly incur and not recover shall be paid by the landholders proportionately to the amount of their rents, conform to a decree which may be granted by the Sheriff on the application of such committee.

Recording and enforcement of regulations.

6. Regulations made in terms of this Act when approved by the Land Court, and any alterations on such regulations when so approved, shall be an order of the Land Court within the meaning of the principal Act, and the provisions of the said principal Act with respect to the recording and enforcement of orders, and all other procedure shall apply to regulations made under this Act.

Signed conditions to be equivalent to regulations.

7.—Where all the landholders interested in a common grazing shall have signed a condition or conditions regulating the use of the same, and the Land Court shall have found or shall find such condition or conditions to be reasonable, as provided by section one, sub-section five, of the said principal Act, such condition or conditions may be recorded and enforced in like manner as if they were regulations made in terms of this Act and approved of by the Land Court.

Crofters Common Grazings Regulation Act, 1908.

8 Edw. 7. Cap. 50.

An Act to extend the powers of the Crofters Commission in regard to the regulation of common grazings.—[21*st December* 1908.] A.D. 1908.

Be it enacted, &c.

Sec. 1.

Short title and construction. 49 & 50 Vict. c. 29.

1.[1]—This Act may be cited as the Crofters Common Grazings Regulation Act, 1908, and shall be read as part of the Crofters Holdings (Scotland) Act, 1886.

1. See note 1 to Sec. 1, Act 1891.

Amendment of Crofters Common Grazings Regulation Act, 1891. 54 & 55 Vict. c. 41.

2.—The power to appoint a committee and to make regulations, conferred by section four of the Crofters Common Grazings Regulation Act, 1891, may be exercised by the Land Court, if they think fit, without any request from a landlord or crofters interested, and without prejudice to the powers conferred by section five of the said Act any person committing a breach of any regulations made and approved under the said Act, shall be liable, on conviction before the sheriff under the Summary Jurisdiction Acts, to a penalty not exceeding forty shillings, and in the case of a continuing offence, to a further penalty not exceeding five shillings for each day during which such offence shall have been continued after written warning from the committee or from the Land Court, and any such penalty shall be recoverable by imprisonment in terms of the Summary Jurisdiction Acts. A person appointed by the Land Court may summon and attend any meeting of a committee under the said Act for the purpose of advising such committee in the performance of their duties, and may otherwise assist in the administration of the said Act as may be directed by the Land Court.

Repeal.

3.—The Crofters Common Grazings Regulation Act, 1891, is hereby repealed to the extent mentioned in the third column of the schedule to this Act.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
54 & 55 Vict. c. 41.	Crofters Common Grazings Regulation Act, 1891.	In section four, the words, "on the request in writing of any two crofters interested, or the landlord or landlords and"; and the words "on the request in writing of any two crofters or of the landlord."

The Congested Districts (Scotland) Act, 1897.

60 & 61 Vict. Cap. 53.

An Act to provide for the administration of Sums available for the Improvement of Congested Districts in the Highlands and Islands of Scotland.[1]—[*6th August* 1897.]

A.D. 1897.

Be it enacted, &c.

1. Section 28, Act 1911, provides that from and after its commencement (1st April 1912), the Congested Districts (Scotland) Commissioners shall cease to exist, and that all their powers and duties shall be transferred to the Board of Agriculture (see that section).

Section 29, Act 1911, transfers all property from the Commissioners to the Board of Agriculture. (This will operate to transfer to the Board lands purchased by the Commissioners under Section 5, *infra.*)

Section 30, Act 1911, provides for transferring to the Board any officers of the Commissioners.

1.—(*Repealed.*)

2.—(*Repealed.*)

Sec. 3.

Constitution of Congested Districts (Scotland) Fund; sums to be carried thereto.

3.—For the purposes of this Act[1] a fund (to be called the Congested Districts (Scotland) Fund)[1] shall be constituted, to which shall, from time to time, be carried:—

[(1)[2] *the sum of fifteen thousand pounds annually available for the improvement of congested districts in the Highlands and Islands of Scotland under and during the continuance of the Agricultural Rates, Congested Districts, and Burgh Land Tax Relief (Scotland) Act,* 1896: *and*

59 & 60 Vict. c. 37.

(2) *any sums not exceeding twenty thousand pounds annually voted by Parliament for the said purpose and during the said continuance; and* *]

(3) any moneys received for payment of interest or repayment

* Words in italics repealed.

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of principal of any loan made by the Board under the provisions of this Act; and

(4) any other sums applicable to the purposes of this Act.

1. Section 4 *supra*. As the Act of 1911 was originally drafted, it proposed to give the Secretary for Scotland power to issue an order, with the consent of the Treasury, for extending the powers under this Act, except power to purchase land, to the whole of Scotland, but this has been dropped.

2. See Section 5, Act 1911, which provides that the sum of £15,000 annually, above referred to, shall be placed at the disposal of the Board of Agriculture for the purposes of that Act, and shall with other sums be paid into the Agriculture (Scotland) Fund.

Application of moneys at disposal of Board.

4.—(1.) In applying the Congested Districts (Scotland) Fund the Board may take such steps as they think proper for—

(*a*) aiding and developing agriculture, dairy farming, and the breeding of live stock and poultry in congested districts;[1] and

(*b*) providing suitable seed potatoes and seed oats and implements and dairy utensils and machinery or appliances for the making of butter or cheese for landholders and cottars in congested districts;[1] and

(*c*) providing, subject to the provisions hereinafter contained, land for sub-division among, or for enlargement of the holdings of, landholders and cottars in congested districts, for the purposes of cultivation or grazing, in such manner and upon such conditions and after such adaptations as shall be determined by the Board; and

(*d*) aiding migration of landholders and cottars [*from congested districts to other districts in Scotland*,*] and settling any migrants under favourable circumstances in the places to which they first migrate; and

(*e*) aiding and developing fishing[2] (including industries connected with and subservient to fishing) and the erection and formation of fishermen's dwellings and holdings in congested districts; and

(*f*) aiding the providing or improving of [*light-houses*,*] piers or boat-slips, public roads and bridges, and footpaths and foot bridges, and meal-mills, in congested districts;[1] and providing guarantees for telegraph extensions, or such

* Words in italics repealed, but regarding the deletion of "light-houses" see Sec. 39, Act 1911.

other postal facilities (including money order and savings bank business) as may be within the power of the Postmaster-General to grant under guarantee; and

(*g*) aiding and developing spinning, weaving, and other home industries in congested districts; and

(*h*) subject to the consent of the Treasury,—
aiding the providing or improving of harbours.

(2.) The Board may give their assistance either by way of gift or loan, or by way of sale at cost price, and subject to such conditions as they think fit, which conditions and the provisions for their enforcement or for the case of their violation shall be as effectual as if they were contained in this Act, and the consent of the Secretary for Scotland shall be necessary before any grant of money is given by way of gift under the provisions of this Act.[3]

(3.) Any person nominated by the Board may, at all reasonable times, and after due notice to the occupier, enter any land occupied by an occupier to whom seed or implements, utensils, machinery, or appliances have been sold or gifted, in order to ascertain whether such seed has been properly sown, or that a proper use is being made of such implements, utensils, machinery, or appliances.

1. See definition Section 10, *infra*. It will be noticed that these are powers specially conferred to be exercised only in Congested Districts.

2. See Section 32, Act 1886, as to loans from Fishery Board to persons engaged in fishing industry, &c.

3. See Secs. 7 (7) and 9, Act 1911, as to powers of Board to grant loans and make gifts for the purposes there stated. As to security for repayment of loans, see Sec. 6, *infra*.

Acquisition adaptation, and disposal of land.

5.—(1.) For the purpose of the purchase of land[1] by the Board (who are hereby authorised to purchase and hold land and dispose thereof as in this Act provided) the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement; and the provisions of sub-section four of section three of the Allotments (Scotland) Act, 1892,[2] with respect to the settlement of disputed compensation for land, shall apply, with the necessary modifications, if he the Board were therein referred to.

55 & 56 Vict. c. 54.

(2.) Any limited owner may sell land to the Board for the

Sec. 5.

purposes of this Act at such a price, or for such consideration, as, having regard to those purposes and to all the circumstances of the case, is deemed reasonable; a limited owner may also, with the sanction of the Local Government Board given under this section, convey the land for that purpose either without payment of any purchase money or compensation, or at a price less than the real value, and may so convey it free of all incumbrances. Provided that the Local Government Board shall not give their sanction under this section unless they are satisfied that the purpose for which the land is conveyed is such as is calculated to benefit the remaining land held by the same title or other land of the same landowner, and provided also that, if the land proposed to be conveyed is subject to incumbrances, the Local Government Board, before giving their sanction under this section, shall cause notice to be given to the incumbrancers, and shall consider the objections, if any, raised by them.[3]

(3.) The Board may, if they think fit, before disposing of land for the purposes of this Act, adapt the same by dividing and fencing it, making occupation roads, and executing any other works, such as works for the provision of drainage or water supply, which can, in the opinion of the Board be more economically and efficiently executed for the land as a whole.[4]

(4.) The Board may also, if they think fit, adapt the land for the purposes of this Act by erecting or assisting in erecting thereon such buildings, or making such adaptations of existing buildings, as, in their opinion, are required for the due occupation of the land, and cannot be made by the landholders or cottars or fishermen.

(5.) Where any right of grazing or other similar right is attached to land acquired by the Board for the purposes of this Act, the Board may attach any share of the right to any holding in such manner and subject to such regulations as they think proper.[5]

(6.) The Board may accept any gifts of property, heritable or moveable, for any or all of the purposes for which money is provided by this Act, and apply them according to the directions of the donor, if consistent in their opinion with the purposes on which they apply the said money, and, subject to any such directions, may apply them in like manner as that money.

1. The powers to purchase land cannot be exercised outside the

congested districts (Sec. 4 (11) (*b*), Act 1911), which are now limited to "Crofting Parishes" (note 1, Sec. 19, Act 1886).

2. See Appendix V.

3. Assuming land affected by incumbrances were conveyed to the Board "free of all incumbrances," how is that to be done as regards title? Clearly the Register of Sasines would show that the land was subject to the incumbrances. Presumably it is intended that the conveyance would bear that it is granted free of the incumbrances. That is, however, an unsatisfactory way of dealing with the matter. There ought to be some provision for getting the creditor to discharge or restrict his security. At least some provision should have been made for registration of a certificate as under Section 6, *infra*.

4. This is very similar to part of Section 7 (7), Act 1911.

5. See Sec. 12, Act 1886; Act 1891; and Sec. 24, Act 1911.

Security for and repayment of loan.

6.—Any loan[1] under the provisions of this Act, shall be secured by a bond which shall be a charge on the holding in favour of the Board, and shall either be repaid by half-yearly instalments of principal, with such interest and within such term (not exceeding a period fixed by the Treasury) from the date of the loan, or at such date thereafter not exceeding eighteen months as may be agreed on, or shall be repaid with such interest and within such term by a terminable annuity payable by half-yearly instalments. The amount for the time being unpaid, may at any time be discharged, and any such terminable annuity may at any time be redeemed in accordance with tables fixed by the Board. A certificate by the Secretary of the Board that the whole of the loan has been repaid, or that such terminable annuity has been redeemed, shall, without any other instrument, operate as a discharge of the said loan and extinction of the said terminable annuity, as the case may be, and the registration of such certificate in the register of Sasines shall be equivalent to the registration of a discharge of the said bond.[2]

1. See Sec. 4 (2), *supra*, and notes thereto. It would appear that the loan is to rank after bonds recorded of prior date.

2. See succeeding section.

As to preparation of titles connected with grants of or loans over land.

7.—(1) The Board shall cause to be prepared and duly registered all deeds, writs, and instruments necessary for completing the title to the land disposed of by them, and for securing the payment of any loan over land made by them, and shall include in the grant or loan the cost so incurred, or to be incurred, in accordance with scales set forth in tables fixed by the Board.

Sec. 7.

(2) The Board, if they think fit, may from time to time appoint, at their pleasure, a person duly qualified to carry out the provisions of this section, and shall assign to him such salary or remuneration as they may determine.

Supplemental.

8.—(1) The Board shall submit to the Treasury annually, and at any other time, for any special purpose, in the form fixed by the Treasury, an estimate showing the amount proposed by the Board to be expended,[1] and the purposes for which the same is proposed to be expended, and shall not expend any sums except in accordance with such estimate and for such purposes when approved by the Treasury.

(2) The Board shall keep such accounts of their receipts and expenditure, and those accounts shall be audited in accordance with such regulations, as the Treasury direct, and be laid before Parliament.

1. Apparently this means for the purposes of this Act.

Report to Parliament.

9.—The Board shall once in every year make a report to the Secretary for Scotland on their proceedings under this Act, and every such report shall be forthwith presented to Parliament.[1]

1. See Sec. 4 (2), Act 1911.

Definitions.

10.—In this Act unless the subject or context otherwise requires—

The expression "congested district" means any crofting parish or crofting parishes, or any area in a crofting parish or crofting parishes, defined by the Board under this Act which they shall, having regard to the population and valuation thereof, determine to be a congested district.

The expressions "crofter," "cottar," and "crofting parish," have the meanings assigned to them in the Crofters Holdings (Scotland) Act, 1886.[1]

49 & 50 Vict. c. 29.

1. The expression "holding" is substituted for "croft," and "crofting parish" shall be construed as meaning a parish to which the Crofters Act applied at the commencement of the Act of 1912 (1st April 1912),—(Sec. 31 (2), of that Act).

Short title.

11.—This Act may be cited as the Congested Districts (Scotland) Act, 1897.

APPENDICES.

APPENDICES.

I.

INTERPRETATION OF TERMS.

Section 34 of the Crofters Holdings (Scotland) Act, 1886, provides that "Other expressions have the same meanings as in the Agricultural Holdings (Scotland) Act, 1883." The latter Act has, however, been repealed, but the Agricultural Holdings (Scotland) Act, 1908, takes its place. Accordingly in the definition section (35) of that Act we find definitions which are neither given in the Crofters Acts nor in the Small Landholders Act, 1911, as follow :—

"Lease" means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year;

"Landlord" means any person for the time being entitled to receive the rents and profits or to take possession of any holding;

"Tenant" means the holder of land under a lease;

"Landlord" or "tenant" includes the executors, administrators, assignees, legatees, disponee, or next-of-kin, husband, guardian, *curator bonis*, or trustee in bankruptcy, of a landlord or tenant;

"Market garden" means a holding cultivated, wholly or mainly, for the purpose of the trade or business of market gardening.

The designations of landlord and tenant shall continue to apply to the parties until the conclusion of any proceedings taken under or in pursuance of this Act in respect of compensation for improvements, or under any agreement made in pursuance of this Act.

II.

COMPENSATION for IMPROVEMENTS under the Agricultural Holdings (Scotland) Act, 1883 (now 1908).

Under Section 31 of the Crofters Holdings (Scotland) Act, 1886, the Crofter now (landholder), and under Section 32 the Small Landholders (Scotland) Act, 1911, statutory small tenants, may claim compensation for improvements under the Agricultural Holdings (Scotland) Act, 1908 (see Introduction, pp. 31, 37, *supra*), the first Schedule of which is as follows :—

FIRST SCHEDULE.

Part I.

Improvements to which consent of Landlord is Required.

(1) Erection, alteration, or enlargement of buildings.
(2) Formation of silos.
(3) Laying down of permanent pasture.
(4) Making and planting of osier beds.
(5) Making of water meadows or works of irrigation.
(6) Making of gardens.
(7) Making or improvement or roads or bridges.
(8) Making or improvement of watercourses, ponds, wells, or reservoirs, or of works for the application of water power or for supply of water for agricultural or domestic purposes.
(9) Making or removal of permanent fences.
(10) Planting of hops.
(11) Planting of orchards or fruit bushes.
(12) Protecting young fruit trees.
(13) Reclaiming of waste land.
(14) Warping or weiring of land.
(15) Embankments and sluices against floods.
(16) Erection of wirework in hop gardens.

[N.B.—*This part is subject as to market gardens to the provisions of the Third Schedule.*]

Part II.

Improvement in respect of which Notice to Landlord is required.

(17) Drainage.

Part III.

Improvements in respect of which Consent of or Notice to Landlord is not required.

(18) Chalking of land.

(19) Clay-burning.

(20) Claying of land or spreading blaes upon land.

(21) Liming of land.

(22) Marling of land.

(23) Application to land of purchased artificial or other purchased manure.

(24) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding.

(25) Consumption on the holding by cattle, sheep, or pigs, or by horses other than those regularly employed on the holding, of corn proved by satisfactory evidence to have been produced and consumed on the holding.

(26) Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years prior to the determination of the tenancy.

(27) Repairs to buildings, being buildings necessary for the proper cultivation or working of the holding, other than repairs which the tenant is himself under an obligation to execute :

Provided that the tenant, before beginning to execute any such repairs, shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within a reasonable time after receiving such notice.

III.

PROCEDURE IN ARBITRATIONS.

Where under Sections 7 and 17 of the Small Landholders (Scotland) Act, 1911, landlord or tenant obtains an arbiter (instead of the Land Court) appointed to deal with his claim, the arbitration is to proceed in accordance with the second Schedule to the Agricultural Holdings (Scotland) Act, 1908, deleting certain parts as in italics below, and substituting the Lord Ordinary for the Sheriff, and the auditor of the Court of Session for the auditor of the Sheriff Court.

The Schedule as printed below, including the parts in italics, and substituting "Land Court" for "Board," is that required for arbitrations with statutory small tenants (Sec. 32 (10), Act 1911).

SECOND SCHEDULE.

Rules as to Arbitration.

Appointment of Arbiter.

1. *A person agreed upon between the parties, or in default of agreement, nominated by the Board on the application in writing of either of the parties, shall be appointed arbiter.*

2. If a person appointed arbiter dies, or is incapable of acting, or for seven days after notice from either party requiring him to act fails to act, a new arbiter may be appointed as if no arbiter had been appointed.

3. Neither party shall have power to revoke the appointment of the arbiter without the consent of the other party.

4. Every appointment, notice, revocation, and consent under this part of these rules must be in writing.

Time for Award.

5.* *The arbiter shall make and sign his award within twenty-eight days of his appointment, or within such longer period as the Board may (whether the time for making his award has expired or not) direct.*

Removal of Arbiter.

6. Where an arbiter has misconducted himself the *Sheriff* may remove him.

Evidence.

7. The parties to the arbitration, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbiter on oath or affirmation in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbiter all samples, books, deeds, papers, accounts, writings and documents, within their possession or power respectively which may be required or called for, and do all other things which during the proceedings the arbiter may require.

8. The arbiter shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses

* In arbitrations under Sections 7 and 17, Act 1911, if the arbiter does not issue his award within three months of his appointment, the matter devolves on the Land Court, p. 71, *supra*.

shall, if the arbiter thinks fit, be examined on oath or affirmation.

Statement of Case.

9. The arbiter may at any stage of the proceedings, and shall, if so directed by the *Sheriff* (which direction may be given on the application of either party), state in the form of a special case for the opinion of the *Sheriff* any question of law arising in the course of the arbitration.

Award.

10. *The arbiter shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall fix a day not sooner than one month or later than two months after the delivery of the award for the payment of the money awarded as compensation, expenses, or otherwise, and shall be in such form as may be prescribed by the Board.*

11. *The award to be made by the arbiter shall be final and binding on the parties and the persons claiming under them respectively.*

12. The arbiter may correct in an award any clerical mistake or error arising from any accidental slip or omission.

13. When an arbiter has misconducted himself, or an arbitration or award has been improperly procured, the *Sheriff* may set the award aside.

Expenses.

14. The expenses of and incidental to the arbitration and award shall be in the discretion of the arbiter, who may direct to and by whom and in what manner those expenses or any part thereof are to be paid, and the expenses shall be subject to taxation by the auditor of the *Sheriff Court* on the application of either party, but that taxation shall be subject to review by the *Sheriff*.*

15. The arbiters shall, in awarding expenses, take into consideration the reasonableness or unreasonableness of the claim of either party, either in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars, and generally all the circumstances of the case, and may disallow the expenses of any witness whom he considers to have been called unnecessarily and any other expenses which he considers to have been incurred unnecessarily.

Forms.

16. *Any forms for proceedings in arbitrations under this Act which may be prescribed by the Board shall, if used, be sufficient.*

* See Secs. 7, 17, and 32, Act 1911, as to expenses.

IV.

POWERS of the BOARD of AGRICULTURE for SCOTLAND.

Section 4 (11) of the Small Landholders (Scotland) Act, 1911, transfers to the Scottish Board the powers and duties of the Board of Agriculture and Fisheries exercisable in or in relation to Scotland under the enactments specified in the first Schedule to that Act (pp. 66 and 108, *supra*). The first item of that Schedule is as follows :—

"The Acts specified in Part II. of the first Schedule to the Board of Agriculture Act, 1889, and any enactments amending or extending the same."

Part II. of that Schedule, deleting many items which have no application to Scotland, is as follows :—

PART II.

Acts relating to Powers and Duties of Land Commissioners for England.

*Tithe Rentcharge Acts.**

*Copyhold Acts.**

*Inclosure of Commons and Allotments Acts.**

*Metropolitan Commons.**

Drainage and Improvement of Land Acts.

Session and Chapter.	Title or Short Title.
9 & 10 Vict. c. 101.	The Public Money Drainage Act, 1846.
10 & 11 Vict. c. 11.	The Public Money Drainage Act, 1847.
*10 & 11 Vict. c. 38.	An Act to facilitate the Drainage of Lands in England and Wales.
11 & 12 Vict. c. 119.	The Public Money Drainage Act, 1848.
13 & 14 Vict. c. 31.	The Public Money Drainage Act, 1850.

* Not applicable to Scotland.

Session and Chapter.	Title or Short Title.
14 & 15 Vict. c. 91. -	The Public Money Drainage Act, 1851.
19 & 20 Vict. c. 9. -	The Public Money Drainage Act, 1856.
24 & 25 Vict. c. 133. -	The Land Drainage Act, 1861.
27 & 28 Vict. c. 114. -	The Improvement of Land Act, 1864.
30 & 31 Vict. c. 101. -	The Public Health (Scotland) Act, 1867.
33 & 34 Vict. c. 56. -	The Limited Owners Residences Act, 1870.
34 & 35 Vict. c. 84. -	The Limited Owners Residences Act (1870) Amendment Act, 1871.
*38 & 39 Vict. c. 55. -	The Public Health Act, 1875.
40 & 41 Vict. c. 31. -	The Limited Owners, Reservoirs, and Water Supply Further Facilities Act, 1877.

Other Duties.

Session and Chapter.	Title or Short Title.
12 & 13 Vict. c. xci. -	The General Land Drainage and Improvement Company's Act, 1849.
15 & 16 Vict. c. 62. -	An Act to alter and amend certain Acts relating to the Woods, Forests, and Land Revenues of the Crown.
16 & 17 Vict. c. cliv. -	The Lands Improvement Company's Act, 1853.
18 & 19 Vict. c. lxxxiv.	The Lands Improvement Company's Amendment Act, 1855.

* Not applicable to Scotland.

Session and Chapter.	Title or Short Title.
19 & 20 Vict. c. lxx. -	The Scottish Drainage and Improvement Company's Act, 1856.
*21 & 22 Vict. c. 44. -	The Universities and College Estates Act, 1858.
22 & 23 Vict. c. lxxxii.	The Land Improvement Company's Amendment Act, 1859.
*23 & 24 Vict. c. 59. -	The Universities and College Estates Act Extension, 1860.
*23 & 24 Vict. c. clxix.	The Land Loan and Enfranchisement Company's Act, 1860.
23 & 24 Vict. c. clxx.	The Scottish Drainage and Improvement Company's Amendment Act, 1860.
*26 & 27 Vict. c. cxl. -	The Lands Improvement Company's Amendment Act, 1863.
*29 & 30 Vict. c. 70. -	An Act to extend the provisions of the Acts for the inclosure, exchange, and improvement of land to certain portions of the Forest of Dean called Walmore Common and the Bearce Common, and for authorising allotments in lieu of the forestal rights of Her Majesty in and over such commons.
*31 & 32 Vict. c. 118. -	The Public Schools Act, 1868.
*34 & 35 Vict. c. clviii.	The Thames Valley Drainage Act, 1871.
*36 & 37 Vict. c. 62. -	The Public Schools (Eton College Property) Act, 1873.
*37 & 38 Vict. c. xxii.	The Thames Valley Drainage Act, 1874.
*40 & 41 Vict. c. xxxvi.	The Somersetshire Drainage Act, 1877.

* Not applicable to Scotland.

Session and Chapter.	Title or Short Title.
*40 & 41 Vict. c. 48. -	The Universities of Oxford and Cambridge Act, 1877, and Statutes made thereunder.
*43 & 44 Vict. c. 46. -	The Universities and College Estates Amendment Act, 1880.
*44 & 45 Vict. c. 41. -	The Conveyancing and Law of Property Act, 1881.
45 & 46 Vict. c. 38. -	The Settled Land Act, 1882.
*46 & 47 Vict. c. 61. -	The Agricultural Holdings (England) Act, 1883.
*47 & 48 Vict. c. 67. -	The Improvement of Lands (Ecclesiastical Benefices) Act, 1884.
50 & 51 Vict. c. 30. -	The Settled Land Acts (Amendment) Act, 1887.
51 & 52 Vict. c. 20. -	The Glebe Lands Act, 1888.

V.

PROCEDURE with respect to Purchase and taking of Land otherwise than by Agreement.

Section 5 (1) of the Congested Districts Scotland Act, 1897, page 158, *supra*, provides that for the purpose of the purchase of land by the Board the provisions of sub-section (4) of Section 3 of the Allotment (Scotland) Act, 1892, with respect to the settlement of disputed compensation for land shall apply with the necessary modifications.

The sub-section is as follows—

(*a*) Any question of disputed compensation shall be referred to the arbitration of a sole arbiter appointed by the parties, or if the parties do not concur in the appoint-

* Not applicable to Scotland.

ment of a sole arbiter, then, on the application of either of them, by the Secretary for Scotland, and the remuneration to be paid to the arbiter appointed by the Secretary for Scotland shall be fixed by the said Secretary.

(*b*) If an arbiter appointed for the purposes of this Act dies or becomes incapable to act before he has made his award, or fails to make his award within two months after he is appointed, his appointment shall determine, and the determination of the compensation shall be referred to another arbiter appointed in like manner as if no arbiter had been previously appointed: Provided always that the same arbiter may be re-appointed.

(*c*) An arbiter appointed under this section shall be deemed to be an arbiter within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to an arbitration shall apply accordingly; and further, the arbiter, notwithstanding anything in the said Acts, shall determine the amount of the expenses, and shall have power to disallow as expenses in the arbitration the expenses of any witness whom he considers to have been called unnecessarily, and any other expenses which he considers to have been incurred unnecessarily.

VI.

FORMS for use under the Acts.

Like the Crofters' Commissioners, the Land Court will probably prepare and issue a set of forms for applications to fix fair rents, for enlargement of holdings, for sisting proceedings for removal of landholder, &c., and when copies of forms for such purposes are required application should be made to the Land Court for them. Such forms are not therefore given in this work.

List of Forms—

1. Notice by landholder to landlord of renunciation of tenancy.

2. Initial writ (condescendence, &c.), to have landholder removed for non-payment of one year's rent.
3. Initial writ (condescendence, &c.), do. for non-payment of two years' rent or for breach of statutory condition.
4. Application by Land Court for authority to resume entire holding.
5. Application for authority to resume part of holding.
6. Intimation of bequest of holding.
7. Letter by landlord declining to accept legatee.
8. Petition to Land Court to find legatee entitled to holding, and answers thereto.
9. Special Case to either Division of Court of Session regarding validity of a bequest.
10. Agreement substituting decision of sole arbiter for decision of Land Court.
11. Intimation to Land Court of desire to have claim for compensation dealt with by arbitration.
12. Intimation to Board of Agriculture for Scotland of desire to have claim for compensation dealt with by arbitration.
13. Application to Lord Ordinary on the Bills for appointment of an arbiter.
14. Initial Writ for direction to arbiter to state a Case for Opinion of Sheriff on question of law arising in an arbitration.
15. Initial writ for removal of surplus stock.
16. Application by statutory small tenant to Land Court to fix equitable rent.
17. Application to Board for leave to amalgamate holding of statutory small tenant.
18. Application by landlord to Land Court for finding that he has reasonable objection to statutory small tenant.
19. Application by statutory small tenant to Land Court for finding that landlord has failed to provide or maintain buildings, &c.

Sec. 7, Act 1886.

1. NOTICE BY LANDHOLDER TO LANDLORD OF RENUNCIATION OF TENANCY.

To AB. of C.

Address

Date 19 .

SIR,—I hereby give you notice, in terms of Section 7 of the Crofters Act, 1886, of my intention to renounce at Whitsunday (*or* Martinmas) 19 my tenancy of the holding of , in the Parish of , and County of , at present occupied by me. I shall quit possession at that term.

Please acknowledge receipt.—I am, &c.

(Signed)

Sec. 18, Act 1911.

Note.—This requires to be intimated by landlord or tenant to the Board within two months of its date.

Sec. 3, Act 1886.

2. FORM of INITIAL WRIT IN THE SHERIFF COURT TO HAVE LANDHOLDER REMOVED FOR NON-PAYMENT OF ONE YEAR'S RENT (Section 3, Act 1886).

Sheriffdom of *at* .

A.B. (*designation and address*), proprietor of , in the Parish of and County of ,—*Pursuer;*

AGAINST

C.D. (*designation and address*),—*Defender.*

The demand of the pursuer is for payment of the sum of £ being one year's rent of the holding of X., belonging to the pursuer and occupied by the defender, in the parish of and county of , said rent having fallen due by equal half-yearly instalments at Whitsunday and Martinmas 19 , and being now in arrear, and failing payment thereof, or caution being found therefore, and for one year's rent in addition, for decree of removing and ejection in terms of Section 17 of the Agricultural Holdings (Scotland) Act, 1908.

Therefore the pursuer craves the Court—

To ordain the defender to pay to the pursuer £ , and, failing payment thereof or caution being found to the satisfaction of the Court for the payment thereof, and also for the payment of the further sum of £ , by equal

half-yearly instalments at the terms of Whitsunday and Martinmas 19 (*or as the case may be*), being one year's further rent of the holding of X. belonging to the pursuer, and occupied by the defender in the parish of and county of , to ordain the defender to remove himself, his family, servants, sub-tenants, cottars, dependants, cattle, goods and gear, furth and from the said holding of X., at the term of Martinmas (*or* Whitsunday) 19 (insert the first of these terms following on the service of the Initial Writ), and to leave the same void and redd to the effect that the pursuer and those authorised by him may enter thereto and peaceably possess and enjoy the same, and failing their removal to grant warrant of ejection; and to find the defender liable in expenses; and further, to ordain the defender to pay to the pursuer interest on said sum of £ from the date of citation.

Condescendence.

1. The pursuer is heritable proprietor of the estate of , in the county of .

2. The defender is a landholder within the meaning of the Small Landholders (Scotland) Act, 1911, in the occupation of the holding of , which is situated in the parish of , and forms part of the said estate of .

3. The rent of said holding is £ per annum, payable in equal half-yearly instalments at Whitsunday and Martinmas.

4. The defender is in arrear in the payment of one full year's rent of said holding amounting to £ , half of which fell due at each of the terms of Whitsunday and Martinmas (*or as the case may be*) 19 .

5. The defender has been called upon, but has failed or refused to pay the said one year's rent, and has thus rendered this action necessary.

6. In these circumstances the pursuer is entitled to decree as craved in terms of the Crofters Holdings (Scotland) Act, 1886, the Small Landholders (Scotland) Act, 1911, and Section 17 of the Agricultural Holdings (Scotland) Act, 1908, with expenses.

Pleas in Law.

1. One year's rent of the said holding of being due and unpaid, the pursuer is entitled to decree of removing and ejection as craved.

2. The defender being due and resting owing to the pursuer the sum sued for decree should be granted therefor, with interest and expenses as craved.

In respect whereof.

Secs. 1 & 3, Act 1886.

3. For removal of Tenant in arrear of Two Years' Rent, or for Breach of a Statutory Condition.

Sheriffdom of *at* .

A.B. (*designation and address as in No.* 1),—*Pursuer;*

AGAINST

C.D. (*designation and address as in No.* 1),—*Defender.*

The demand of the pursuer is to find that the defender, a landholder within the meaning of the Small Landholders (Scotland) Act, 1911, in occupation of the holding of , in the parish of and county of is in arrear with, and is due and resting owing to the pursuer two years' rent of said holding (*or* that the defender has broken a statutory condition by (*insert statement of the condition, and what has been done, or omitted to be done, in breach of it*)), and to decern and ordain the defender forthwith to flit and remove himself, his family, subtenants, cottars, and dependents, with cattle, goods and gear, furth and from the said holding that the pursuer or others in his right may enter into and possess the same, and to grant a decree against the defender for payment to the pursuer of £ , being the amount of said arrears of rent, with interest thereon from the date of citation, and to find the defender liable in expenses.

Therefore the pursuer craves the Court—

To decern and ordaint he defender summarily to flit and remove himself, his wife, family, servants, sub-tenants, cottars, and dependents, with their cattle, goods and gear, furth and from the said holding, and to leave the same void and redd, to the effect that the pursuer and others authorised by him may enter thereto and peaceably possess and enjoy the same in all time coming, and that under the pain of ejection; and further, to ordain the defender to make payment to the

pursuer of the sum of £ , being the amount of said rents due and unpaid for said holding, with interest from the date of citation and with expenses.

Condescendence.

1. (*Same as in preceding form.*)
2. („ „ .)
3. („ „ .)

4. The rent of said holding payable by the defender to the pursuer is in arrear and unpaid to the extent of £ , being two full years' rent thereof, conform to statement herewith produced.

5. The pursuer has repeatedly called upon the defender to make payment of the said rents, but he has refused or failed to pay the same, and has thus rendered this action necessary.

Plea in Law.

Two years' rents of said holding being due and unpaid (*or* the defender having broken a statutory condition as condescended on), the pursuer is entitled to decree as craved, with expenses.

In respect whereof.

4. APPLICATION BY LANDLORD TO THE SCOTTISH LAND COURT FOR AUTHORITY TO RESUME AN ENTIRE HOLDING. Sec. 2, Act 1886.

County of .
Parish of .

SMALL LANDHOLDERS (SCOTLAND) ACTS.

Application by Landlord to resume an entire holding.

Name of Estate.
Landlord's Name and Postal Address.
Factor's do.
Landholder's do. (A.B.)
(*or* Statutory Small Tenant's do.)

To The Scottish Land Court,
c/o The Sheriff Clerk at the County of
at

Under reference to the annexed Statement of Facts, I hereby apply in terms of Section 2 of the Crofters Holdings (Scotland)

Act, 1886, and Section 19 of the Small Landholders (Scotland) Act, 1911 (*or* in terms of Section 32 (15) of the Small Landholders (Scotland) Act, 1911), for authority to resume at the term of the holding of at in said Parish at present occupied by the said A.B.

(Signed)

At
this day of 19 .

Statement of Facts.

1. The applicant is proprietor of the holding of in the Parish of and County of . A.B. is the landholder (*or* the statutory small tenant) at present occupying said holding, which extends to acres, and the rent of which is £ .

2. The said holding is the applicant's only landed estate, and he wishes to resume it for the purpose of personally residing thereon.

(Signed)

5. APPLICATION BY LANDLORD TO THE SCOTTISH LAND COURT FOR AUTHORITY TO RESUME PART OF A HOLDING.

County of .
Parish of .

SMALL LANDHOLDERS (SCOTLAND) ACTS.

Application by landlord to resume part of a holding.

Name of Estate.
Landlord's Name and Postal Address.
Factor's do.
Landholder's do.
(*or* Statutory Small Tenants).

To The Scottish Land Court,
c/o The Sheriff Clerk of the County of
at

Under reference to the annexed Statement of Facts, I hereby apply in terms of, &c. (*as in preceding form*), for authority to resume that portion of the holding of at in the Parish of and County of at

present occupied by A.B. , extending to or thereby, which is coloured pink on the Ordnance Survey map herewith produced and signed as relative hereto.

(Signed)

At
the day of 19 .

Statement of Facts.

1. (*As in preceding form.*)

2. The applicant has received an offer to take on feu part of said holding extending to half an acre fronting the road, as shown coloured pink on the Ordnance Survey sheet herewith produced. Said offer is also produced.

3. The applicant is prepared to give to the said A. in exchange a piece of land equal in extent and quality to that proposed to be resumed and adjacent to and at the rear of said holding as shown coloured blue on said map.

(Signed)

6. BEQUEST OF TENANCY.

Under Section 16 of the Act of 1886 (as amended by Section 20 of the Act of 1911) a landholder may bequeath his right to his holding. Sec. 16, Act 1886.

1. *Intimation of Bequest* (to be made to landlord or his agent within two months after landholder's death unless prevented unavoidably).

Address
Date 19 .

SIR,—In accordance with Section 16 of the Crofters Act, 1886 (as amended), I hereby intimate that the late C.D., a landholder in possession of the holding at X. belonging to you (*or* belonging to your client, if the intimation is addressed to the proprietor's Agent), died on 19 , and by his Will, of which a copy is enclosed, bequeathed to me his right to that holding.

Please acknowledge receipt.—Yours, &c., E.F.

To A.B. (*Landlord's* (*or his Agent's*) *name and address*).

(Note.—As a safeguard it may be prudent to send this intimation by registered letter).

7. REFUSAL OF LANDLORD TO ACCEPT LEGATEE.

SIR,—With reference to your letter of intimating an alleged bequest to you of the late C.D.'s rights to the holding at X., I beg to intimate that I object to receive you as a landholder of said holding.—Yours, &c.

To E.F. (*legatee's name and address*).

Sec. 16, Act 1886.

8. PETITION TO LAND COURT TO FIND LEGATEE ENTITLED TO THE HOLDING.

The Landholders (Scotland) Acts.

In the Scottish Land Court.

E.F. (*designation, &c.*),—*Petitioner;*

AGAINST

A.B. (*designation, &c.*),—*Respondent.*

The above named petitioner submits to the Land Court the statement of facts and note of pleas in law hereto annexed and prays the Court—

To find and declare that the petitioner is the landholder of the holding at X. in the parish of and county of formerly occupied by the deceased C.D., and that as from the day of 19 (the date of C.D.'s death), and to find the respondent liable in expenses.

Statement of Facts.

1. The deceased C.D. was in possession as landholder up to the date of his death of the holding at X. in the parish of and county of . The respondent is heritable proprietor of said holding.

2. The said C.D. died on the day of 19 , and by his last will and testament, dated 19 , which is produced and founded on, bequeathed to the petitioner his rights as landholder in and to said holding.

3. The petitioner is (*state relationship*) of the deceased.

4. By letter dated 19 , of which a copy is produced herewith, the petitioner intimated said bequest in his favour to the respondent, who by letter dated 19 , also herewith

produced, intimated that he objected to receive the petitioner as landholder of said holding.

5. In these circumstances the petitioner is under the necessity of making this application.

Pleas in Law.

The petitioner as legatee is entitled to decree as craved, with expenses.

In respect whereof.

ANSWERS FOR THE RESPONDENT TO THE PETITIONER'S STATEMENT OF FACTS. (Where the relationship of the legatee is more distant than wife, son, grandson, brother or son-in-law (Section 16, Act 1886.) Sec. 16, Act 1886.

1. Admitted.

2. Admitted.

3. Admitted.

4. The letters are referred to for their terms, beyond which no admission is made. Explained that as the respondent's said letter bears he is prepared to accept the petitioner as landholder of said holding, should the Court not decide to use the said holding for the enlargement of other holdings, as they are entitled to do seeing the relationship of the petitioner to the deceased is more distant than wife, son, grandson, brother, or son-in-law. The respondent respectfully represents to the Court that the said holding should be used for enlarging the adjacent holdings on his estate occupied by F.G. and G.H., which at present extend respectively to only (*area*) and (*area*), and are rented at £ and £ respectively. The deceased's holding extended to (*area*) and is rented at £ . It would be a great advantage to the said F.G. and G.H. to have their holdings enlarged as suggested, and the present is an exceptionally favourable opportunity for doing so, no other land being available for the purpose. They desire to have their holdings enlarged, and both are able properly to stock and work the same when enlarged.

5. Admitted, under reference to the immediately preceding answer.

Pleas in Law.

1. The respondent is entitled to have the prayer of the petition refused, in the event of the Land Court deciding to use the said holding for the enlargement of adjacent holdings.

2. In the circumstances the pursuer is not entitled to expenses.

Sec. 25, Act 1911 (but see Note 5, Sec. 16, Act 1886, as to competency of this procedure).

9. SPECIAL CASE to either Division of the Court of Session regarding Validity of a Bequest of a Holding.

In the matter of

An Application by C.D. (*designation, &c.*), to the Scottish Land Court to have bequest in his favour of right to a holding found valid;

FOR

The opinion and judgment of the Court of Session.

1. A.B. (*designation, &c.*) was at the time of his death on 19 a landholder within the meaning of the Small Landholders (Scotland) Act, 1911, in respect and in the occupancy of the holding of at in the parish of and county of .

2. On 19 C.D. (*designation, &c.*), intimated to E.F. (*designation, &c.*), the landlord of said holding that the said A.B. had, by his last will and testament, dated bequeathed to him, the said C.D., his right to said holding.

3. On 19 the said E.F. intimated to the said C.D. that he objected to receive him as landholder in succession to the said A.B.

4. On 19 the said C.D. lodged with the Scottish Land Court an application (herewith produced) to have the said bequest in his favour found valid, and he produced a document, dated (also herewith produced), which purports to be a holograph will of the said A.B.

5. G.H. (*designation, &c.*), the eldest son of the said A.B., has intimated to the Scottish Land Court that he claims as on intestacy the right to said holding in succession to the said A.B.

6. The Scottish Land Court are of opinion that the said will by

expressly bequeathing all the said A.B.'s "subjects and effects" to the said C.D., is effective in bequeathing any heritable estate of the said A.B., including his right to said holding, to the said C.D. The said E.F., the landlord, and the said G.H., dispute this, but admit the genuineness of said will, and have requested us to state a Special Case for the opinion of your Lordships on the question at issue, in accordance with Section 25 (2) of the Small Landholders (Scotland) Act, 1911.

7. The question of law for the opinion of the Court is—

Is the said holograph will in terms to effectively bequeath deceased's right to said holding to the said C.D.?

This case, as settled and adjusted by the said C.D., E.F. and G.H., is stated by the Scottish Land Court.

*

10. AGREEMENT SUBSTITUTING DECISION OF A SOLE ARBITER FOR THE DECISION OF THE LAND COURT. Sec. 30, Act 1886.

MINUTE of AGREEMENT between A.B., the landlord, and C.D., the tenant, of the holding of , in the Parish of , and County of .

Considering that the said C.D. is the landholder in occupation of said holding of , on the estate of , belonging to the said A.B. Further considering that the said A.B. and C.D. have agreed to have the fair rent of said holding fixed by a sole arbiter instead of by the Land Court. Therefore the said A.B. and C.D. hereby nominate and appoint G.H. sole arbiter to fix and determine the fair rent to be paid annually from and after the term of Whitsunday (*or* Martinmas) 19 , for the said holding, and the said parties hereby agree to accept and abide by the decision of the said G.H. as sole arbiter instead of the decision of the Land Court, in terms of Section 30 of the Crofters Holdings (Scotland) Act, 1886.

In witness whereof, &c.

Witness. (Signed) A.B.
Witness.
Witness. („) C.D.
Witness.

Sec. 7, Act 1911.

11. INTIMATION TO SCOTTISH LAND COURT OF DESIRE TO HAVE CLAIM FOR COMPENSATION UNDER SECTION 7 (11), ACT, 1911, DEALT WITH BY ARBITRATION INSTEAD OF BY LAND COURT.

Scottish Land Court.

Small Landholders (Scotland) Act, 1911.

County of . Order No.

Parish of . Dated 19 .

Intimation that Arbitration desired (Section 7 (11)).

To the Scottish Land Court,

c/o. The Sheriff-Clerk of the County of B. at B.

As landlord (or tenant) of the farm of , I beg to intimate that (1) I claim compensation to an amount exceeding £300 sterling; and (2) I desire to have the question whether damage or injury entitling me to compensation in terms of Section 7 of the above Act will be done in consequence of, and directly attributable to the constitution of the new holding or new holdings as proposed in the above Order, together with the amount of such compensation (if any), settled by arbitration instead of by the Land Court.

(Signed) A.B.

Postal address.

Date.

12. BOARD OF AGRICULTURE FOR SCOTLAND. THE SMALL LANDHOLDERS (SCOTLAND) ACT, 1911.

To The Board of

Agriculture for Scotland.

Scottish Land Court's Order No. *dated* .

Intimation that Arbitration desired (Section 7, (11)).

As landlord, &c. (*repeat as in No.* 7).

13. APPLICATION TO THE LORD ORDINARY ON THE BILLS FOR THE APPOINTMENT OF AN ARBITER UNDER SECTION 7 (11) of the Act of 1911.

Unto The Right Honourable The Lord Ordinary Officiating on the Bills.

THE PETITION OF A.B. (*designation*);

Humbly sheweth,—

That the petitioner is the landlord (*or* tenant) of the farm of , in the parish of , and county of .

That of this date the petitioner received from the Scottish Land Court an Order No. , dated , which is produced herewith.

That of this date the petitioner sent intimation to the Scottish Land Court and to the Board of Agriculture for Scotland that he claimed compensation to an amount exceeding £300 sterling, and that he desired to have the question whether damage or injury entitling him to compensation in terms of Section 7 of the Small Landholders (Scotland) Act, 1911, will be done in consequence of and directly attributable to the constitution of the new holding or new holdings as proposed in said Order. A copy of the Intimations is produced herewith.

That the petitioner has failed to agree with the Board of Agriculture for Scotland regarding the appointment of an arbiter.

That in these circumstances the petitioner finds it necessary to apply to your Lordship to appoint an arbiter in accordance with Section 7 (11) of the Small Landholders (Scotland) Act, 1911.

May it therefore please your Lordship to appoint this petition to be served upon the said Board of Agriculture for Scotland, and to ordain them to lodge answers thereto if so advised, within such short space of time as your Lordship may appoint; and on resuming consideration thereof with or without answers, to nominate and appoint some fit and proper person to be arbiter under and in terms (Section 7 (11)) of The Small Landholders (Scotland) Act, 1911; or to do further or otherwise in the premises as to your Lordship shall seem proper.

According to Justice.

Sec. 7, Act 1911.

14. FOR DIRECTION TO ARBITER TO STATE A CASE FOR THE OPINION OF THE SHERIFF ON A QUESTION OF LAW ARISING IN THE COURSE OF AN ARBITRATION.—(Second Schedule (Rule 9), Agricultural Holdings (Scotland) Act, 1908).

Sheriffdom of *at*

A.B. (*designation, &c.*),—*Pursuer;*

AGAINST

Y.Z. (*designation, &c.*), as arbiter in an arbitration between the Pursuer and the Board of Agriculture for Scotland, and the said Board of Agriculture for Scotland, for their interest,—*Defenders.*

The demand of the pursuer is—

For a decree ordaining the said Y.Z. as sole arbiter in the arbitration under Section 7 (11) of the Small Landholders (Scotland) Act, 1911, between the pursuer and the said Board of Agriculture for Scotland, to state a case for the opinion of the Sheriff on a question of law which has arisen in the course of said arbitration.

Therefore the pursuer craves the Court—

To ordain the defender the said Y.Z. as sole arbiter in the said arbitration under Section 7 (11) of the Small Landholders (Scotland) Act, 1911, between the pursuer and the said Board of Agriculture for Scotland relative to claims for compensation for damage or injury sustained or that may be sustained by him in consequence of and directly attributable to the constitution of a new holding or new holdings as proposed by Order No. of the Scottish Land Court, dated 19 , to state a case for the opinion of the Sheriff upon the following questions of law which have arisen in the course of said arbitration, namely:—

1. Is the loss of profit which will result to the pursuer from the reduction in the size of the farm held by him under lease, in consequence of the constitution of the new holding or holdings as proposed in said Order, a lawful claim at the instance of the pursuer against the defenders.

2. In the event of the foregoing question being answered in the affirmative, must said loss of profit be restricted to the period up to the first break in the lease?

And in the meantime to interdict, prohibit and discharge the said Y.Z. from pronouncing or issuing any award in said arbitration pending the disposal of this application, and to find the defenders jointly and severally, or severally, liable in expenses, and to decern.

Condescendence (if ordered).

1. The pursuer is tenant of the farm of in the Parish of and County of , under lease thereof granted in his favour by , the proprietor of said farm, for the period of nineteen years from Martinmas 1912, with a mutual break at the end of every fifth year from said term. The defender, Y.Z., is the arbiter duly appointed in an arbitration between the pursuer and the Board of Agriculture for Scotland, in accordance with the Small Landholders (Scotland) Act, 1911. The defenders, the Board of Agriculture for Scotland, are constituted under said Act.

2. The pursuer on 19 received from the Scottish Land Court an Order No. dated (herewith produced) for the constitution otherwise than by agreement of one or more new holdings in accordance with the provisions of Section 7 of said Act. Part of the pursuer's said farm will be cut away from him in the event of said holding or holdings being constituted as proposed in said order.

3. On the pursuer's application, the Lord Ordinary on the Bills on 19 appointed the defender, the said Y.Z., as arbiter in the arbitration between the pursuer and the said Board of Agriculture for Scotland under sub-section 11 of said section of said Act, relative to claims for compensation for damage or injury sustained or that might be sustained by the pursuer in consequence of and directly attributable to the constitution of said new holding or holdings as proposed.

4. The said arbiter accepted office on 19 .

5. One of the items of the pursuer's claim is for loss of profit which will result to him from the reduction in the size of said farm in consequence of the constitution of the new holding or new holdings as proposed in said order.

6. The defender contends that the pursuer must be held to have entered into said lease subject to the conditions of the Small Landholders (Scotland) Act, 1911, and in particular the condition which authorised the taking of land for the constitution of new holdings

otherwise than by agreement, and that the pursuer is in no worse position than if the land had been resumed by the proprietor in virtue of a provision in the lease authorising him to resume it for any reasonable or necessary purpose on giving an abatement of rent equal to the average rent per acre over the whole farm. Accordingly, the defender contends that (1) said loss of profit cannot be claimed as for damage or injury to the pursuer in consequence of and directly attributable to the constitution of the new holding or holdings as proposed in said order; (2) in any event the defender maintains that the loss of profit must be confined to that which could have been earned on the land proposed to be taken away and to the period up to Whitsunday (*or* Martinmas, *as the case may be*), when there is a power in the landlord or tenant to terminate the tenancy on one year's previous notice.

In these circumstances the questions of law as stated in the Initial Writ have arisen in the course of the arbitration. The pursuer requested the arbiter to state a case for the opinion of the Sheriff on said questions of law, but the arbiter has declined to do so. The present application has therefore been rendered necessary.

Plea in Law.

A question of law having arisen in the course of said arbitration, and the arbiter having refused at the request of the defender to state a case for the opinion of the Sheriff thereon, the arbiter ought to be directed to state a case as craved.

In Respect Whereof.

Sec. 5, Act 1891.

15.—FOR REMOVAL OF SURPLUS STOCK.—(Under Section 5, Crofters Common Grazings Regulation Act, 1891.)

Sheriffdom of *at* .

A.B. (*designation*), Proprietor of the Estate of *Z.*,—*Pursuer*;

AGAINST

A.E. and E.F. (*designations*), Landholders at , in the Parish of , and County of ,—*Defenders.*

The demand of the pursuer is—

For removal of surplus stock from the common grazings of the township of T.

Therefore the pursuer craves the Court—

To find that the defenders, conjunctly and severally, or severally, have been and are putting cattle (*or* horses or sheep, *as the case may be*) on the common grazing of the township of T. in excess of the numbers which they are respectively entitled to put thereon in accordance with the regulations of said township: To decern and ordain the defenders, conjunctly and severally, or severally, as regards the cattle (*or as above*) belonging to each of them, respectively forthwith to remove the cattle (*or as above*) belonging to them or to any of them so far as in excess of such numbers; and in the event of the defenders or either of them failing to remove said cattle (*or as above*) in excess as aforesaid, to grant warrant to the pursuer to remove the said cattle (*or as above*) in excess as aforesaid, and to sell the same by public roup or private bargain; and to consign the surplus, under deduction of the expenses of this Petition and of said removal and sale, in the hands of the Clerk of Court for behoof of the defenders, and to find the defenders liable in expenses.

Condescendence.

1. The township of T. is situated on and forms part of the pursuer's estate of Z. in the parish of and County of . The defenders are landholders in said township, and are members of the Committee appointed under the Crofters Grazings Regulation Act, 1891.

2. The said Committee drew up regulations for said common grazings, which were approved of by the Crofters Commission (*or* Land Court, *as the case may be*) on 19 . The authority of the Sheriff was interponed to said regulations in terms of Section 6 of said Act. A copy of the Regulations is produced herewith.

3. Said Regulations provide (Article 2) that—(*quote the regulation so far as necessary*).

4. In breach of said regulation quoted in the preceding article, the defenders jointly and severally, or severally, have kept and persist in keeping (*here state in what respect the breach consists, and the consequent damage or injury to the other landholders and the pursuer*).

5. The pursuer has called upon the defenders to remove said

surplus stock, but they have refused or delayed to do so. The present petition has therefore been rendered necessary.

Pleas in Law.

1. The said stock being in excess of the numbers which the defenders are allowed to keep in accordance with said regulations, the defenders should be ordained to remove the same.

2. Failing the defenders removing said surplus stock, warrant for sale thereof ought to be granted as craved.

Sec. 32 (7), Act 1911.

16. APPLICATION BY STATUTORY SMALL TENANT TO THE SCOTTISH LAND COURT TO FIX AN EQUITABLE RENT AND THE PERIOD OF RENEWAL OF A LEASE.

(*Same heading as in Form* 11.)

In accordance with Section 32 (7) of the Small Landholders (Scotland) Act, 1911, and under reference to the annexed Statement of Facts, I, the statutory small tenant of the holding of in said parish, hereby apply to the Land Court to fix and determine the equitable rent and period of renewal of my tenancy of said holding from and after the term of 19 , when the existing tenancy as set forth in the accompanying lease (*or other documents, or as the case may be*), would fall to terminate.

(Signed)

At
the day of 19 .

Statement of Facts.

1. The applicant is the statutory small tenant of the holding of in the parish of and County of . A.B. is the landlord of said holding.

2. The holding extends to acres arable and acres pasture.

3. The rent per annum for the years up to the term of , when the existing tenancy would fall to terminate, is £ .

4. The conditions of the tenancy for that period are those set forth in the lease produced.

5. In accordance with said lease (*or as the case may be*), the

landlord effected on the holding the improvements specified in Schedule hereto.

6. The applicant and his predecessor in title effected on said holding the improvements specified in the Schedule hereto without receiving payment or fair consideration therefor from the landlord or his predecessor.

7. The conditions of proposed new tenancy are the same as those of the expiring one (*or as the case may be*).

17. APPLICATION TO THE BOARD FOR LEAVE TO AMALGAMATE THE HOLDING OF A STATUTORY SMALL TENANT WITH ANOTHER HOLDING. Sec. 32 (3), Act 1911.

County of .

Parish of .

STATUTORY SMALL TENANTS.

Landholders (Scotland) Acts.

Application by Landlord for leave to amalgamate holdings.

Name of Estate.

Landlord's name and postal address.

Factor's do.

To The Board of Agriculture for Scotland.

In terms of Section 32 (3) of the Small Landholders (Scotland) Act, 1911, I hereby apply, under reference to the annexed Statement of Facts, for leave to merge or amalgamate the holding of belonging to me at in said Parish, with the adjacent holding of , also belonging to me.

(Signed)

At
this day of 19 .

Statement of Facts.

1. The holding of extending to 25 acres in the Parish of , belongs to the applicant, and for some years prior and up to Whitsunday (*or* Martinmas) 19 , was occupied by A.B. as a statutory small tenant at a rent of £20 per annum.

2. At said term the said A.B. , after due notice in terms of The Agricultural Holdings (Scotland) Act, 1908, quitted

possession of said holding, and although the applicant has made every effort by advertisement and otherwise to find another tenant on reasonable terms he has failed to do so. Copies of the newspapers containing the advertisements, and copy of the relative conditions of let are produced herewith. (If inadequate offers were received they should also be produced.)

3. C.D., the tenant of the adjacent farm of , also belonging to the applicant, has offered to take the said holding provided it is merged in and amalgamated with his said farm, which extends to seventy acres, and is rented at £55 per annum. The applicant is prepared to accept the offer subject to the consent of the Land Court being obtained.

4. The said vacant holding is too small, having regard to its remote situation and the inferior quality of its soil, for a tenant to profitably cultivate as a separate subject. The said C.D. will, however, be able to turn it to advantage as part of his present holding, because he will be able to work the two holdings as one at only a slight increase of expense, and the increase of rent he will have to pay will be comparatively small seeing that the one set of buildings will suffice for the conjoined holdings.

(Signed)

Sec. 32 (4), Act 1911.

18. APPLICATION BY LANDLORD TO THE SCOTTISH LAND COURT FOR FINDING THAT HE HAS REASONABLE GROUND OF OBJECTION TO A STATUTORY SMALL TENANT.

County of.

Parish of.

STATUTORY SMALL TENANTS.

Landholders (Scotland) Acts.

Application by Landlord for leave to terminate a tenancy.

Name of Estate.

Landlord's name and postal address.

Factor's do.

To the Scottish Land Court,

c/o The Sheriff Clerk of the County of at

I hereby apply to the Scottish Land Court, under reference to the statement of facts annexed, for a finding in accordance with

Section 32 (4) of the Small Landholders' (Scotland) Act, 1911, that I have reasonable ground of objection to A.B., a landholder in the occupation of the holding of on and part of my estate of in said parish.

(Signed)

At this day of 19 .

Statement of Facts.

1. The applicant is the proprietor of the estate of in the parish of and county of .

2. The holding of on and part of said estate, rented at £ per annum, is presently occupied by A.B., a statutory small tenant whose lease falls to terminate (*failing renewal*) at Whitsunday (*or* Martinmas) 19 . The lease is produced herewith.

3. The applicant has reasonable ground of objection to the said A.B., in respect that he is now and has been regularly for years past in arrears with the rent of said holding. A statement from the estate rent ledger is produced showing (*explain*). Further, during the past two years the said A.B. has had an entirely inadequate stock on said holding, and he has failed to properly cultivate and manure the holding, which through his neglect has been allowed to become overgrown with docks, thistles and other weeds, &c., &c.

Or,

The said A.B. is personally a most objectionable tenant. He is very intemperate in his habits. Instead of staying at home and attending to the work of his holding he is constantly driving to different towns, whence he frequently returns late at night under the influence of drink. He has on many occasions used foul and abusive language to the applicant and his factor, and that absolutely without provocation of any sort.

Or,

The said A.B. never loses an opportunity of making himself offensive to the applicant and his factor (*give specific instances*). On 19 and 19 (*give dates*), the said A.B. did his utmost to prevent the applicant and his shooting guests from getting any sport over said holding. On these occasions the said A.B. came out with a gun in his hand, a dog at

his heels, and commenced shooting at small birds while the applicant and his guests were close at hand. He did this evidently on purpose to interfere with sport, and when he was quietly asked to desist he laughed and jeered, and flatly refused on the pretext that he was killing vermin for the protection of his crops, which however were all cut and removed by that time.

4. The applicant has given the said A.B. the notice of intention to terminate his tenancy required by Section 18 of the Agricultural Holdings (Scotland) Act, 1908. A copy of the notice is produced.

(Signed)

Sec. 32 (11), Act 1911.

19. APPLICATION BY TENANT TO LAND COURT to find and declare that the Landlord has (1) on the renewal of the tenancy failed to provide such buildings as will enable the tenant to cultivate the holding in accordance with the Lease, or (2) that he has at any time failed to maintain the buildings, &c., required for the cultivation and reasonable equipment of the holding in so far as the tenant is not required at common law or by agreement in writing to do so.

(*Same heading as before.*)

I , tenant of the holding of in said parish, hereby apply to the Land Court, under reference to the annexed Statement of Facts, to find and declare in accordance with Section 32 (11) of the Small Landholders' (Scotland) Act, 1911, that C.D., the landlord of said holding, has on the renewal of my tenancy at Whitsunday (*or* Martinmas) 19 failed to provide such buildings as will enable me to cultivate the holding according to the terms of the lease thereof (*or* that the said C.D., the landlord of said holding, has failed to maintain the buildings and permanent improvements required for the cultivation and reasonable equipment of said holding), in so far as I am not required at common law or by express agreement in writing to do so.

(Signed)

At the day of 19 .

Statement of Facts.

1. The applicant is the statutory small tenant of the holding of in said parish, belonging to C.D. of .

2. The applicant's tenancy of said holding was renewed for a period of years from and after the term of 19 by (state whether by lease or agreement or by lease or agreement and tacit relocation, and refer to any determination by the Crofters Commission or Land Court fixing a fair rent, &c.). A copy of said lease (*or* agreement, &c.) are produced herewith.

3. In terms of said lease (*or* agreement, &c.), the applicant is bound to cultivate said holding according to the rules of good husbandry.

4. There is no stable on the holding—the only accommodation for horses being a temporary rough wooden shed put up by the applicant at his own expense many years ago and now in a tumble down condition. A new stable is required to enable the applicant to cultivate the holding in accordance with the said lease (*or as the case may be*).

5. The applicant has on several occasions, immediately before as well as since the renewal of the tenancy, requested the said C.D. to erect a suitable stable, but that has not been done.

6. The applicant is under no obligation at common law or by agreement in writing to erect a stable for the holding.

Or,

4. The roofs of the byre and stable on said holdings were badly damaged by a very severe gale and snow storm which occurred on 19 , part of the roof of the stable being blown off, and a large number of the slates being dislodged on that roof and on the roof of the byre and broken. The said C.D. has been several times called on to repair the said damage, but he refuses to do so. In consequence the stable and byre are neither wind nor water tight, and the applicant has been and is being subjected to great inconvenience in connection with the cultivation of the farm as well as risk of injury to his horses and cows.

5. The said repairs are necessary for the maintenance of the buildings required for the cultivation and reasonable equipment of the holding, and the applicant is not required by common law or by agreement in writing to effect them.

6. (*As before.*)

(Signed)

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